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Governor Provides Clarity on 'Essential Business' CalChamber Urges Counties to Adopt Guidelines



Over the weekend following the last print edition of *Alert*, Governor Gavin Newsom issued a directive providing greater clarity and detail about what is an "essen-

tial business."

In a statement issued on March 21, hours after the Governor's directive was posted online, Allan Zaremberg, president and CEO of the California Chamber of Commerce, expressed appreciation for "the hard work and dedication of Governor Newsom and his staff for providing directives that will clarify and give certainty on essential business operations so employers and employees can continue to operate and be productive."

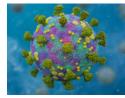
Zaremberg urged "all local officials to follow the lead of the Newsom administration by conforming their directives to these guidelines. "A large number of California businesses operate in many different counties or span the entire state, so the need for consistency in supply chain operations is critical.

"The guidelines provided by the Governor's office are an important element of keeping our economy open for essential business during this crisis and for resolving the risk of inconsistent and arbitrary enforcement.

"I am encouraging all business in California to follow the public health directives laid out by the Governor."

The Governor's directive, the list of "essential critical infrastructure workers," and a list of FAQs is posted online at *https://covid19.ca.gov/stay-home-exceptfor-essential-needs/*. The page notes that updates to the list of essential critical workers may be issued periodically, with the most recent updates reflected in blue text.

California Businesses Retool and Donate to Help Fight Coronavirus (COVID-19)



COVID-19 has brought unprecedented difficulties to California and the nation—but chief among them is highlighting a

shortage in health care-critical supplies.

The nation's hospitals and supply chains were simply not prepared with the volume of personal protective equipment (PPE) that COVID-19 has made necessary.

As Governor Gavin Newsom laid out Monday afternoon at his press conference, California's doctors and nurses need more materials in order to be safe while they save lives—specifically, 1 billion gloves, 500 million respirators and 200 million face shields.

Businesses Step Up

Many businesses are already stepping up to help fill this void. U.S. manufacturers have shifted to produce more respirators, in coordination with state and federal authorities. 3M has doubled global production of N95 respirators,

See California Businesses: Page 6

IRS, State Tax Board Extend Tax Filing Deadline as Emergency Measure



In a move intended to relieve some of the financial pressure invoked by the coronavirus, Treasury Secretary Steven Mnuchin announced the IRS has moved the national income tax filing deadline

to July 15, 2020.

Mnuchin tweeted, "At @realDonaldTrump's direction, we are moving Tax Day from April 15 to July 15. All taxpayers and businesses will have this additional time to file and make payments without interest or penalties." He also wrote, "I encourage all taxpayers who may have tax refunds to file now to get your money."

In addition to the extended July 15 filing deadline, the economic relief bill would also extend the due date for estimated payments to October 15, 2020. The bill would treat all estimated payments due through October 15, 2020, as "one installment due on such date." Thus, taxpayers would not need to write separate checks for the skipped April and July estimated payment dates.

See IRS: Page 5

-Inside—

Common Employer Questions about COVID-19: Page 3



Labor Law Corner Allergy Claim Triggers Need for Interactive Evaluation of Options



Dana Leisinger HR Adviser

We have an employee who is claiming she's allergic to various things in the office, but quite honestly, she has been trying to work from home for months, so we're a little dubious (she's claiming she's allergic to some strange things). What should we do?

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Email: alert@calchamber.com. Home page: www.calchamber.com. When an employee comes to an employer claiming allergies to items in the workplace, that triggers the need to enter into the interactive process under state and federal disabilities law. This process requires the employer and the employee to meet and discuss possible reasonable accommodations.

Exploring Options

Although an employee may greatly desire to telecommute, many job functions do not allow for telecommuting. It is, however, an option to consider—evaluating whether the essential job functions can be performed remotely, and if it won't work out, explaining why to the employee is part of that interactive process.

Surprisingly, some individuals are allergic to some common things in the workplace, such as: toner in copiers or printer cartridges, cleaning supplies, and perfumes used by other employees.

In addition, some people have compromised immune systems and truly suffer from levels of known allergens that other employees won't notice.

Input from Employee

Get your employee's input into possible alternatives—employees who have

lived with allergies their entire lives know many ways to work around the allergies.

Options might mean offering protective gear (gloves, respirator), a schedule of different hours to limit exposure to allergens, using HEPA air filters in the office and changing them regularly, and taking building maintenance and cleanliness seriously. Such options are a particularly good way to go in light of the current situation with the coronavirus.

If an accommodation can't be met, a last step might be to request medical documentation substantiating the condition, and the doctor's input into possible avenues to explore.

A complete list of accommodations is too lengthy to cite, and depends on each situation. If the employee's request is ultimately deemed to be unreasonable, be prepared to explain to him/her why this is so.

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.

Federal Economic Stimulus Package

As *Alert* went to press, Congress was preparing to adopt a \$2 trillion economic stimulus package. The California Chamber of Commerce will provide more information on what the 800+-page legislation really means for members in a future edition.

See calchamber.com/events for the latest list of CalChamber-sponsored seminars, trade shows and webinars.





<u>The Workplace</u> The Most Common Questions Employers Are Asking About COVID-19



In Episode 55 of The Workplace podcast, CalChamber Executive Vice President and General Counsel Erika Frank is joined

by employment law experts Bianca Saad and Matthew Roberts to discuss the most common coronavirus-related questions employers and human resources professionals have been asking the CalChamber's Labor Law Helpline this past week.

The answers to the following questions have been shortened. To hear the in-depth answer, visit the time stamps attached to each question at *www. calchamber.com/theworkplace*.

FAQs

Q: What is the difference between a layoff and a furlough? [Time Discussed: 02:35]

This question is likely the most common being asked at the Helpline so much so, Roberts says, that he wrote an article on *HRWatchdog* this week addressing this very question.

A furloughed employee remains an employee, but with reduced or eliminated work hours, while a layoff generally means a complete employment severance. If an employee's work hours are reduced to zero, however, and they are not called to work within the same pay period, the law will deem the furlough a layoff, Roberts explains.

Q: Can I take an employee's temperature before they start work? [Time Discussed: 07:38]

Generally, an employer cannot take an employee's temperature as it is considered a medical exam. However, Saad says, given the recent recommendations from the Centers for Disease Control (CDC) to address community spread of COVID-19, the Equal Employment Opportunity Commission (EEOC) and California Department of Fair Employment and Housing (DFEH) are permitting employers to take employees' temperatures if specifically related to COVID-19, effective March 2020.

Employers should bear in mind that taking an employee's temperature is subject to American with Disabilities Act (ADA) confidentiality requirements, she adds.

Q: I am confused by the shelter-in-place orders. Is my business an "essential business"? [Time Discussed: 10:52]

The list of the types of businesses deemed "essential" is lengthy, technical and varies depending on the statewide order or a particular county's order. Roberts recommends that business owners should refer to the Governor's state order or the *HRWatchdog* article "What Is and Isn't 'Essential' Business Under California's 'Stay at Home' Order" to determine if their business is deemed "essential." Both resources are linked on the CalChamber coronavirus resource page.

Q: We recently learned an employee tested positive for COVID-19. Are we required to notify all of our employees? [Time Discussed: 13:06]

If an employee tests positive for COVID-19, employers should immediately contact county health officials and the California Department of Public Health. The agencies will direct employers on what steps they need to take, Roberts explains.

Employers should be mindful of employees' privacy, and not divulge names. Employers can alert employees with a general statement that an employee has tested positive for COVID-19, and other employees may have been exposed. *Q: Many of our employees have children that are no longer in school due to school closures. Do we have to pay these employees who are not working?* [*Time Discussed: 16:13*]

There are several options to consider, Saad says.

California has school activities leave that includes school-related emergencies (applies to employers with more than 25 employees), providing 40 hours a year. Employers also can require that employees use other available personal leaves, such as vacation time, or, depending on a company's policy, allow employees to take unpaid time off.

If possible, employers may offer remote work options. Another option becoming available on April 1 is the new federal Emergency Family Medical Leave Expansion and Emergency Paid Family Leave Act. *Q: We are considered an "essential business" and we are having our employees report to the workplace. Can we require our employees to wear protective gear, such as masks? [Time*]

Discussed: 20:57]

Employers can require employees to wear personal protective equipment, but should make reasonable accommodations where appropriate, Roberts explains. For example: if an individual is in a wheelchair and is required to wear a gown, the employer should find a gown that will fit; if an employee has a latex allergy, the employer should provide nonlatex gloves. *Q: We have more than 100 employees and due to COVID-19 must lay off 20% of our workforce. What laws must I follow? [Time Discussed: 22:13]*

The 60-day notice requirement under the California Worker Adjustment and Retraining Notification Act (WARN Act) has been suspended under a recent order issued by Governor Gavin Newsom. Employers still are required to provide written notice as soon as practicable with a statement of why the notification period was reduced and information for obtaining unemployment insurance benefits, Saad says. *Q: If we close our company due to COVID-19 do we pay our employees?* [*Time Discussed: 25:50*]

Employers still must meet final pay requirements and are subject to waiting time penalties, Roberts stresses.

Roberts points out that these requirements may be especially difficult to meet if a company's workforce is currently working remotely. The Labor Commissioner is currently looking at this issue and further guidance is expected. *Q: How do we pay exempt and nonexempt employees who are working remotely? [Time Discussed: 29:01]*

Pay obligations do not change simply because an employee (exempt or nonexempt) is working remotely, Saad explains.

If an exempt employee does any work in a week, the employee must be paid. If, however, the employee does not do any work in the week, the employee's weekly salary may be reduced.

For nonexempt hourly employees, all hours worked must be paid. Employers should accurately track any time worked, and pay for overtime if it occurs. Employers also should ensure that nonexempt employees take appropriate meal and rest breaks—especially since employees may forget to take their breaks in a home setting. Examples of easy things employees can do to remember to take breaks include setting an alarm.



<u>The Workplace</u> COVID-19 Emergency Federal Paid Leaves Explained



The federal government passed a coronavirus emergency relief package on March 18 that provides protected paid leave to workers

impacted by COVID-19. In Episode 54 of The Workplace podcast, CalChamber President and CEO Allan Zaremberg is joined by employment law expert Benjamin Ebbink and CalChamber Executive Vice President Jennifer Barrera to discuss what employers should know about the new Emergency Paid Sick Leave Act, and Emergency Family and Medical Leave Expansion Act.

Criteria

The Emergency Paid Sick Leave Act, and Emergency Family and Medical Leave Expansion Act are temporary measures that will take effect on April 1 and will sunset on December 31, 2020. The measures apply to employers with fewer than 500 employees—employers with more than 500 employers are not covered, Ebbink, partner at Fisher Phillips law firm, explains.

Medical test results are not needed to qualify for either leave, but each leave has different criteria.

Paid Sick Leave

To qualify for the Emergency Paid Sick Leave Act (EPSLA), Ebbink says, a worker must meet one of following criteria:

1) Be subject to a federal, state or local quarantine or isolation order related to COVID-19;

2) Advised by a health care provider to self-quarantine due to COVID-19 concerns;

3) Experience COVID-19 symptoms and seek medical diagnosis;

4) Care for an individual (not just a family member) subject to a federal,

state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns;

5) Care for a child if the child's school or place of care is closed or the child's care provider is unavailable due to public health emergency; or

6) Experience any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

This leave provides employees with 80 hours of protected paid sick leave. The rate of pay depends on the reason for the leave. If a worker is taking leave for self-care (criteria 1–3 above), the worker will be compensated at the regular rate of pay (subject to pay caps). If the leave is to care for someone else (criteria 4–6 above), compensation will be at two-thirds the regular rate of pay (subject to pay caps).

Emergency Family and Medical Leave Expansion Act

To qualify for the Emergency Family and Medical Leave Expansion Act (EFMLA), an employee must have worked for the employer for 30 days or longer.

The EFMLA provides up 12 weeks of protected leave to an employee, who is unable to work or telework, to care for their child (under 18 years of age) if the child's school or place of care is closed or the childcare provider is unavailable due to a public health emergency, Ebbink explains.

The first 10 days of the leave is unpaid, but during the 10-day period, an employee may elect to substitute any accrued paid leave (like vacation or sick leave) to cover some or all of the 10-day unpaid period. After the 10-day period, the employer generally must pay full-time employees at two-thirds the employee's regular rate for the number of hours the employee would otherwise be normally scheduled, Ebbink says.

Tax Credit Available

Due to the outbreak and quarantine measures across the country, many businesses are feeling extreme financial strain and some cannot afford to keep employees on the payroll. Ebbink reiterates that the federal job protections will start on April 1 and will apply to those defined as an "employee." At the moment, the laws are not retroactive.

The federal government will reimburse businesses impacted by the EFMLA and EPSLA by providing a quarterly tax credit, Ebbink says.

Essentially, the government will ultimately pick up the tab, but employers will have to shoulder the upfront costs initially, Zaremberg explains.

Ebbink adds that the U.S. Treasury is looking at the issue and considering alternatives for immediate economic relief to pay for the paid leave package. Congress also is expected to pass the third stage of an economic stimulus package that will help businesses afford the EFMLA and EPSLA.

California Legislation

California does not have a counterpart to the new EFMLA yet; however, Assemblymember Ash Kalra (D-San Jose) has introduced a bill that proposes to provide an extended leave of absence for employees impacted by the virus, Barrera explains.

The state Legislature is not expected to return from recess until April 13, so we will all have to wait and see if a California-specific leave will be introduced and passed, she added.

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Businesses Ask Attorney General for More Time to Comply with Unfinished Privacy Act Regulations



While Californians struggle to shoulder the economic impacts of COVID-19, business owners are being asked to spend money and resources on compliance with new Cali-

fornia Consumer Privacy Act (CCPA) regulations when businesses need those resources to support their employees and communities.

Introducing new regulations at this time will harm small business owners who are struggling today as a result of a force majeure.

For this reason, more than 60 organizations representing thousands of businesses that employ millions of Californians have come together in a joint industry effort to request in a letter their Attorney General's support during this time.

More Time Needed

This is not the first time that businesses have asked the Attorney General to delay enforcement of CCPA regulations. Businesses have been asking for additional time to digest these complex new regulations for months—even before the COVID-19 pandemic.

The impending July 1 deadline was already threatening business owners with enforcement actions for failure to comply with regulations by that date. But as of the date of this article, there are still no regulations with which to comply.

Combine this short compliance timeline and a sudden economic downturn, the letter argues, and the request to delay enforcement of these regulations becomes more pressing now than ever. Businesses need more time to educate themselves on the new regulations and figure out how they will afford the costs of compliance.

Six-Month Delay Requested

In the early stages of the rulemaking process, the Attorney General collaborated with Berkeley Economic Advising and Research, LLC to prepare a required Standardized Regulatory Impact Assessment (SRIA) for CCPA regulations.

The SRIA estimated the total cost of initial compliance with the CCPA to be approximately \$55 billion, the equivalent to approximately 1.8% of California gross state product in 2018.

Taxing California's business owners in this way, particularly during an economic downturn, takes resources away from more pressing commitments that businesses have to their employees and their communities. As is apparent in all of our neighborhoods today, California's local business owners are the ones who are suffering most during this downturn.

By foregoing enforcement for an additional six months, industries plead, the Attorney General can help to relieve some of that economic suffering today.

The joint industry letter, signed by industries from virtually every sector of the economy, recognizes the tremendous burden that the Attorney General has shouldered in promulgating CCPA regulations for the state.

But not all businesses are equally resilient, and the current economic and social crisis warrants some consideration to the limitations that businesses face today: citizens are being directed to shelter in place, local governments are asking businesses to close, and the state has directed only essential businesses to remain open.

For these reasons, businesses across California jointly, and respectfully, are relying on their government for support. In the joint industry letter, businesses ask the Attorney General for his support by foregoing enforcement of CCPA regulations for an additional six months. **Staff Contact: Shoeb Mohammed**

IRS, State Tax Board Extend Tax Filing Deadline as Emergency Measure

From Page 1

State Deadline

In a similar move, the California Franchise Tax Board (FTB) has extended the state filing deadline, which now matches the federal directive. The FTB is postponing the filing and payment deadlines for all individuals and business entities until July 15. This will include filings for:

• 2019 tax returns;

• 2019 tax return payments;

• 2020 1st and 2nd quarter estimate payments;

• 2020 LLC taxes and fees;

• 2020 non-wage withholding payments.

"The COVID-19 pandemic is disrupting life for people and businesses statewide," said State Controller Betty T. Yee, who serves as chair of the FTB. "We are further extending tax filing deadlines for all Californians to July 15. Hopefully, this small measure of relief will help allow people to focus on their health and safety during these challenging times."

Since California conforms to the underlying code sections that grant tax

postponements for emergencies, the FTB is extending the relief to all California taxpayers. Taxpayers do not need to claim any special treatment or call the FTB to qualify for this relief.

Schools have closed, small businesses have shuttered, Californians are on lockdown and, most pressing, a virus continues weaving its way through the world. Hopefully these new tax deadlines will provide some solace, however small it may be, during this turbulent time. **Staff Contact: Preston Young**



Chief Justice Delays All California Jury Trials for 60 Days



California Chief Justice Tani Cantil-Sakauye on March 23 suspended all criminal and civil trials in the state's superior courts for 60 days in an effort to curb the coronavirus

(COVID-19) pandemic.

The order affects all 58 superior courts across California. Local courts, however, can choose to conduct some business—just not jury trials.

As "essential services," courts are exempt from Governor Gavin Newsom's recent stay-at-home executive order. The Chief Justice said in her order that courts are "ill-equipped to effectively allow the social distancing and other public health requirements" imposed by the Governor's executive order to prevent the spread of the novel coronavirus.

"Court proceedings require gatherings of court staff, litigants, attorneys, witnesses, and juries, well in excess of the numbers allowed for gathering under current executive and health orders," Cantil-Sakauye said. "Even if court facilities could allow for sufficient social-distancing, the closure of schools means that many court employees, litigants, witnesses, and potential jurors cannot leave their homes to attend court proceedings because they must stay home to supervise their children."

Details of the Order

The Chief Justice's order includes the following directives, which went into effect on March 23:

• All jury trials are suspended and continued for 60 days.

• The time period to begin criminal and civil trials is extended for 60 days.

• Superior courts are authorized to adopt any proposed rules or rule amendment intended to address the impact of the coronavirus pandemic to take effect immediately, without advance circulation for public comment.

Courts may conduct a trial at an earlier date, however, upon a finding of "good cause shown," or via remote technology when appropriate.

California Businesses Retool and Donate to Help Fight COVID-19

From Page 1

producing almost 100 million respirators per month, as of this week. Honeywell has ramped up production and is hiring additional workers. GM is also moving to help supply respirators, and even fashion designers and apparel companies are shifting to produce surgical masks and gowns.

And these efforts aren't just limited to manufacturers—everyone across the state is looking to help. Even as California's business community struggles with the economic consequences of social distancing, we are also doing what we can to help.

Local construction companies, contractors, hardware stores, and many others are donating their N95 respirators. Tech giants such as Facebook, IBM, Apple, Tesla, eBAY, Salesforce, and others have all made donations of cash or medical supplies—including many N95 respirators (purchased to comply with last year's wildfire smoke regulation) to support this immediate threat. Pacific Gas & Electric is donating nearly a million protective masks from the supply it keeps on hand for crews responding to fires. Ford has opened its factories to 3M to help speed up manufacturing. Hardware stores such as The Home Depot and Lowe's have donated much-needed supplies directly from their inventory.

In this time of crisis, the California Chamber of Commerce remains in regular communication with the Governor's Office, legislators, and regulatory agencies to provide input and seek clarification on how California's businesses can simultaneously help address this crisis and survive its economic hazards.

And as CalChamber continues in this role, we have heard from authorities across the state: despite the efforts mentioned above, and action at the federal level, more is still needed.

As health care professionals risk their lives facing this pandemic, we must help them—and by helping them, we will also improve our own health care outcomes.

How to Help

• If you are able to help by donating any potentially useful medical supplies, such as N95 respirators, face shields, surgical gowns, or surgical gloves, please contact the California Office of Emergency Services, which is coordinating supplies, donations, and manufacturing issues for health care supplies, and can be contacted at: *contributions@ caloes.ca.gov*.

• California's blood banks are struggling in this time as well. With nationwide distancing, blood drives have been canceled, leading to a blood shortage that could bring an entirely different set of hazards to anyone undergoing surgery and in need of a transfusion. If you have no supplies to give, but still want to help, consider giving blood. To find out where you can donate blood and make an appointment, visit *redcrossblood.org*. **Staff Contact: Robert Moutrie**



Coronavirus (COVID-19): **Federal, State, & Local Resources** calchamber.com/coronavirus



Furloughs Versus Layoffs: Is There a Difference in California?



Many California businesses are facing difficult choices during this COVID-19 pandemic (also known as the

coronavirus pandemic). Confronting losses in revenue and uncertainty in the future, businesses are evaluating their options for preserving their companies while maintaining their workforce.

California Chamber of Commerce members are asking, "What is the difference between furloughing and laying off employees?"

Essentially, a furloughed employee remains an employee but with reduced or eliminated work hours, while a layoff generally means a complete employment severance. (You may remember "furlough" when it was commonly used a decade ago during Governor Arnold Schwarzenegger's administration, when he furloughed state workers to address budgetary concerns.)

Need for Clarity

However, under the current circumstances, the California Labor Commissioner may not see a real difference between a temporarily furloughed employee without any work hours and a laid-off employee.

In a pair of opinion letters (Opinion Letter 1993.05.04 and Opinion Letter 1996-05-30), the Labor Commissioner stated that if an employer reduces an employee's scheduled work hours to zero—and does not reschedule that employee within the same pay period—the employer has effectively laid off the employee, which triggers the final pay requirements under Labor Code Section 201.

In addition to Labor Code Section 201 concerns, if an employer with 75 or more employees ends up "laying off" 50 or more employees, it may trigger California Worker Adjustment and Retraining Notification Act (CalWARN Act) requirements, which Governor Gavin Newsom temporarily modified last week.

Because of the unique circumstances

surrounding the Governor's CalWARN order and the pandemic, CalChamber continues to ask the Labor Commissioner for clear guidance on the final pay rules.

Employers need to stay in close contact with their legal counsel because of the constantly evolving legal atmosphere and other employment issues arising from COVID-19.

CalChamber Resources

Visit the CalChamber Coronavirus (COVID-19) webpage for more COVID-19-related federal, state and local resources, including CalChamber coverage.

Listen to Episode 55 of The Workplace podcast to hear a discussion on layoffs versus furloughs and other common questions asked by employers calling the CalChamber Labor Law Helpline.

Lenovo.

Staff Contact: Matthew J. Roberts

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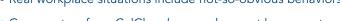
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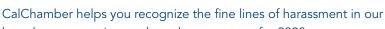


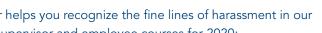
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