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NAVIGATING THE NEXT.

**Weekly Webinar Series: Returning to Work in
California: Highlights of Major State and
Local Orders**

Daryl Landy, Andrea Fellion, and Nicole Beckley
October 21, 2020

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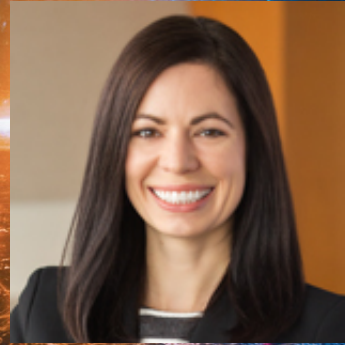
Presenters



Daryl Landy



Andrea Fellion



Nicole Beckley

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County Risk Level: What Businesses Can Reopen

The background of the slide is a composite image. At the top, there is a dark blue space filled with numerous small white stars. A bright, glowing horizon line, possibly representing the sun or a distant star, curves across the middle of the frame. Below this horizon, a cityscape is visible at night, with lights from buildings and streets. Overlaid on the city and extending upwards is a network of glowing blue lines that connect various points, resembling a digital or data network. The overall color palette is dominated by blues, oranges, and whites.

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October 13 – San Francisco, Santa Clara, Alameda

- As of October 13 three Bay Area counties were listed in the orange, or “moderate,” tier
- Statewide – allows:
 - Non-essential offices – encourage telework
 - Indoor dining – maximum 50% capacity
 - Retail – no capacity limitations

County Orders – Not so fast...

- Alameda
 - Not ready to allow Orange Tier activities
 - Will update health order to allow additional activities (including indoor dining) the week of October 26
- San Francisco
 - Retail – 50% capacity
 - Indoor dining – 25% capacity
 - Office workplaces – closed with limited exceptions

County Orders – Not so fast...

- Santa Clara
 - Retail – no capacity limitations
 - Indoor dining – 25% capacity
 - Offices – can reopen!*
 - Refer to the state - no additional county requirements
- * with restrictions

Business or Activity	State's Orange Risk Tier (with County Health Order Requirements)
Critical infrastructure sectors	Open (and follow all County Health Officer Order requirements listed here).
Limited-contact services (e.g., watch repair, tailors)	Open (and follow all County Health Officer Order requirements listed here).
Personal care services businesses	Open for all indoor and outdoor operations (except for specific services not allowed outdoors, as listed here). In addition, follow all County Health Officer Order requirements listed here and here .
Retail stores	Open (follow all County Health Officer Order requirements listed here).
Shopping malls	Open , but common areas must remain closed (follow all County Health Officer Order requirements listed here). Food courts closed for indoor dining (picking up food to eat outdoors or take home is allowed).
Museums, zoos, aquariums	Open indoors at 50% capacity (follow all County Health Officer Order requirements listed here).
Places of worship	Open outdoors up to 200 people (follow all County Health Officer Order requirements listed here and here). Open indoors up to the lesser of 100 people or 25% capacity (follow all County Health Officer Order requirements listed here and here).
Movie theaters	Open outdoors (follow all County Health Officer Order requirements listed here). Open indoors up to the lesser of 100 people or 25% capacity (follow all County Health Officer Order requirements listed here and here).

October 20 – Updates

- Santa Clara and Alameda – Still Orange / Moderate
- San Francisco – Yellow / Minimal Tier
 - News Articles / Mayor Announcement:
 - Offices reopen 25% starting October 27
 - Expand capacity of reopened businesses to 50% starting November 3
 - Indoor dining, museums, worship services
 - Schools – approved 56 schools to reopen, some high schools on track to reopen in November
 - Health Order – Updated October 20



AB 2992: Crime Victim Leave Expansion

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AB 2992 Expands Protections for Employed Crime Victims

- All Employers:
 - Prohibited from discriminating or retaliating against an employee who is a:
 - Victim of domestic violence, sexual assault, or stalking;
 - **Victim of a crime that either caused physical injury or mental injury with a threat of physical injury; or**
 - **Whose immediate family member died due to a crime.**

AB 2992 Expands Protections for Employed Crime Victims

- **Crime** = crime or public offense, **wherever it may take place**, that would constitute a misdemeanor or a felony if the crime had been committed in California by a competent adult (Cal. Gov't Code § 13951(b)(1)), **regardless of whether any person is arrested for, prosecuted for, or convicted of committing the crime.**
- **Immediate Family Member** = **child, regardless of age** (biological, adopted, foster, step, legal ward, domestic partner's child, child to whom employee stands in loco parentis current/past); **parent** (biological, adoptive, foster, step, legal guardian (employee or employee's domestic partner/spouse), person who stood in loco parentis when employee or employee's domestic partner/spouse was a minor); **spouse/domestic partner**; **sibling** (biological, foster, adoptive, step, or half); **any other individual whose close association with the employee is the equivalent of the family relationships described.**

AB 2992 Expands Protections for Employed Crime Victims

- Certification Requirements:
 - An employer may not take any action against the employee if, within a reasonable time after the absence, the employee provides a certification in the form of a:
 - Police report;
 - Court order, or other evidence from a court/prosecuting attorney that the employee appeared in court;
 - Documentation from a licensed medical professional, domestic violence counselor, sexual assault counselor, **victim advocate**, licensed healthcare provider, counselor treating the employee for crime/abuse-related physical or mental injury; or
 - **Any other form of documentation that reasonably verifies that the crime/abuse occurred:**
 - Written statement signed by the employee or an individual acting on the employee's behalf certifying that the absence is for an authorized purpose.

AB 2992 Expands Protections for Employed Crime Victims

- Authorized purposes for leave:
- All employers:
 - To appear in court to comply with a subpoena or as a witness in any judicial proceeding; or
 - To obtain relief including a temporary restraining order, restraining order, or other injunctive relief to ensure the health, safety, or welfare of the victim or their child.
- Employers with 25+ employees:
 - Seek medical attention for injuries caused by crime/abuse;
 - Obtain services from a domestic violence shelter or program, rape crisis center, or victim services organization/agency as a result of the crime/abuse;
 - Obtain psychological counseling or mental health services related to an experience of crime/abuse; or
 - Participate in safety planning and take other actions to increase safety from a future crime or abuse.

Paid Sick Leave: State and Local Requirements Update



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COVID-19 Supplemental Paid Sick Leave Ordinances

- **AB 1867 COVID-19 Supplemental Paid Sick Leave (CA Statewide)** requires covered employers to provide up to 80 hours of paid sick leave for specific COVID-19–related reasons
 - Applies to employers with *more than 500 employees*
 - Applies to any entity employing health care providers or emergency responders and *has elected to exclude such employees from the FFCRA*.
- **Local COVID-19 Supplemental Paid Sick Leave Orders and Ordinances in California to date:**
 - 1) Los Angeles Mayor’s Order
 - 2) Los Angeles City Council Ordinance
 - 3) Los Angeles County
 - 4) Long Beach
 - 5) Oakland
 - 6) San Francisco
 - 7) San Jose
 - 8) San Mateo County**
 - 9) Santa Rosa**
 - 10) Sonoma County**
 - 11) Sacramento**
 - 12) Sacramento County**

Local Supplemental Paid Sick Leave Laws Are Not Identical

- **Some similarities among most local COVID-19 SPSL Laws:**
 - Generally require 80 hours of paid sick leave for covered FT employees (unless an exemption applies)
 - Qualifying reasons for SPSL not limited to just employees having COVID-19 or showing symptoms of COVID-19
 - Many have been enacted on an “emergency” or “urgency” basis — they are effective immediately, but the final version is not released for several days after taking effect
 - Most include private rights of action with attorneys fee provisions
 - Most cap the amount of employer obligation, based on a daily max rate and a total obligation (e.g., \$511/day, capped at \$5,110 total).
- **Many differences among the local COVID-19 SPSL Laws, including:**
 - Definitions of “covered employers”
 - Definitions of “covered employees”
 - Effective dates
 - Exemptions
 - How to calculate pay for sick leave hours
 - Restrictions on requests for supporting documentation

Right to Recall/Reemployment Ordinances

The background of the slide is a composite image. At the top, a bright sun or star is visible on the horizon of a planet, casting a glow over a cityscape. The city is shown at night, with lights from buildings and streets. Overlaid on the city is a network of glowing blue lines connecting various points, resembling a digital or communication network. The sky above the city is dark and filled with stars, suggesting a space-themed background.

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Right to Recall/Reemployment Ordinances

- AB 3216, the CA Statewide Right of Recall legislation, was vetoed by Governor Newsom.
- **Local Ordinances enacted:**
 - **Los Angeles:**
 - Applies only to airport, commercial property, event center, and hotel employers.
 - Positions that become available after June 14, 2020 must be offered to qualified employees who were laid off on or after March 4, 2020.
 - **Oakland:**
 - Applies only to airport hospitality providers, event centers, hotels, and restaurants.
 - Employers must offer eligible employees who were employed for at least 6 months in the 12 months prior to January 31, 2020 and who were laid off after January 31, 2020 due to economic, nondisciplinary reasons, in writing, any openings that become available after July 1, 2020.
 - **Long Beach:**
 - Applies to certain commercial property and hotel employers that employ at least 25 employees.
 - Employees laid off after March 4, 2020 due to economic, non-disciplinary reasons must be given rehire priority.

Right to Recall/Reemployment Ordinances

- **Local Ordinances Cont'd:**

- **San Francisco:**

- Applies to all employers operating within San Francisco that employ 100+ employees and lay off 10 or more employees working within San Francisco within a 30-day period.
- Employers must provide written notice to employees of covered layoffs and their rights under the ordinance.
- Employers must, in order of seniority, rehire employees into previously held positions, or a substantially similar position, before offering the positions to other individuals.

- **San Diego:**

- Applies only to commercial property, event center, and hotel employers.
- Employers must offer positions that open after September 8, 2020 to qualified employees who were laid off on or after March 4, 2020.

Return to Work Resources for Employers

View a list of the [return to work resources](#) we have developed to support employers' efforts in safely returning to work.

Get more information on our [Return to Work – Stay in the Safe Zone](#) training program.

Access our [workplace reopening checklist](#).

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RETURN TO WORK RESOURCES

Category	Work Product
Essential Business and/or Reopening Guidance	State and Local Orders, Ordinances, and Regulations Regarding Shelter in Place, Business Restrictions, and Business Reopening Chart <ul style="list-style-type: none">We can also provide weekly updates
	We can also create customized charts of specific orders or just reopening orders. Examples: <ul style="list-style-type: none">Requirements Regarding Temperature Screens and Symptom ScreensRequirements for PPE or Face Coverings
Workplace Screening, Social Distancing, PPE, and Sanitization Policies and Procedures	Social Distancing Policy Template, Customization Guidance, and Face Covering Policy Template
	Active Screening Protocol with Temperature/Symptom Screening Policy Template
	FAQs on COVID-19 Molecular and Serology Testing
	Infection Control Protocols for the Workplace
	<i>Policies and procedures can be customized for the company.</i>
Training	Webinar Training Program on Social Distancing and Safety Measures for Return to Work
Unions	Labor Management Return To Work Memorandum of Understanding Template

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California Year in Review Webinar Series

- **December 2** – New California Employment Legislation
- **December 9** – Significant 2020 Employment Law Cases

[Register now!](#)

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We have witnessed constant change in the workplace this year. Please join us for a two-part webinar series as we review California employment case law and legislative developments. We will discuss the significant cases and rapidly changing employment laws, interpret their impact, and provide recommendations for employers and HR professionals to ensure legal compliance and mitigate risk.

REGISTER NOW 

CREDIT

CLE credit (1 hour per webinar) in CA, FL, IL, NJ (via reciprocity), NY, PA, TX, and VA is currently pending approval.

QUESTIONS?

For more information, please email [Kathryn Bohn](mailto:Kathryn.Bohn@morganlewis.com) or call +1.213.612.7215.

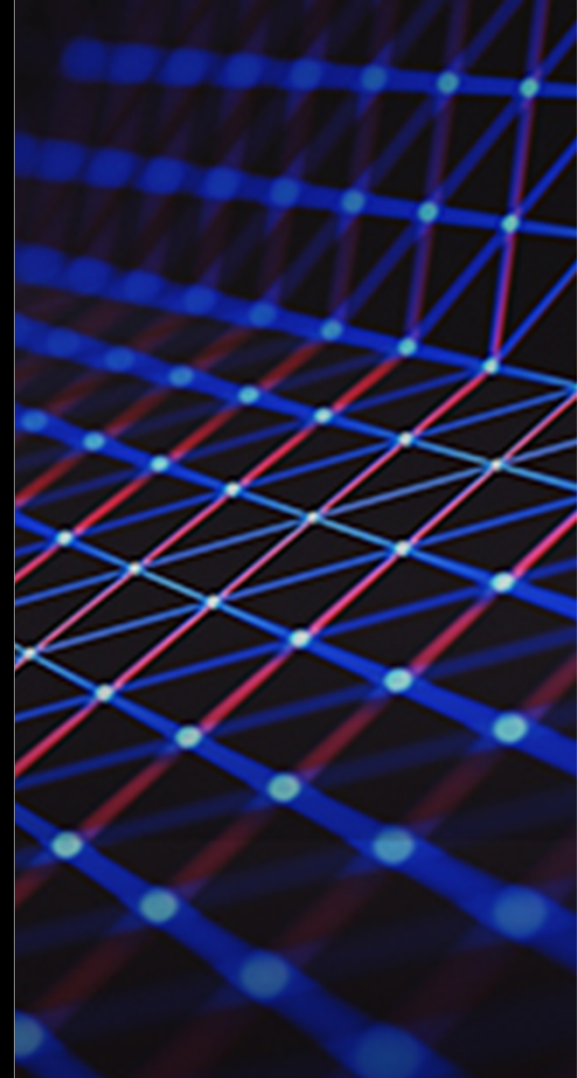
Coronavirus/ COVID-19 Resources

We have formed a multidisciplinary **Coronavirus/COVID-19 Task Force** to help guide clients through the broad scope of legal issues brought on by this public health challenge.

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To help keep you on top of developments as they unfold, we also have launched a resource page on our website at www.morganlewis.com/topics/coronavirus-covid-19.

If you would like to receive a daily digest of all new updates to the page, please visit the resource page to [subscribe](#) using the purple "Stay Up to Date" button.

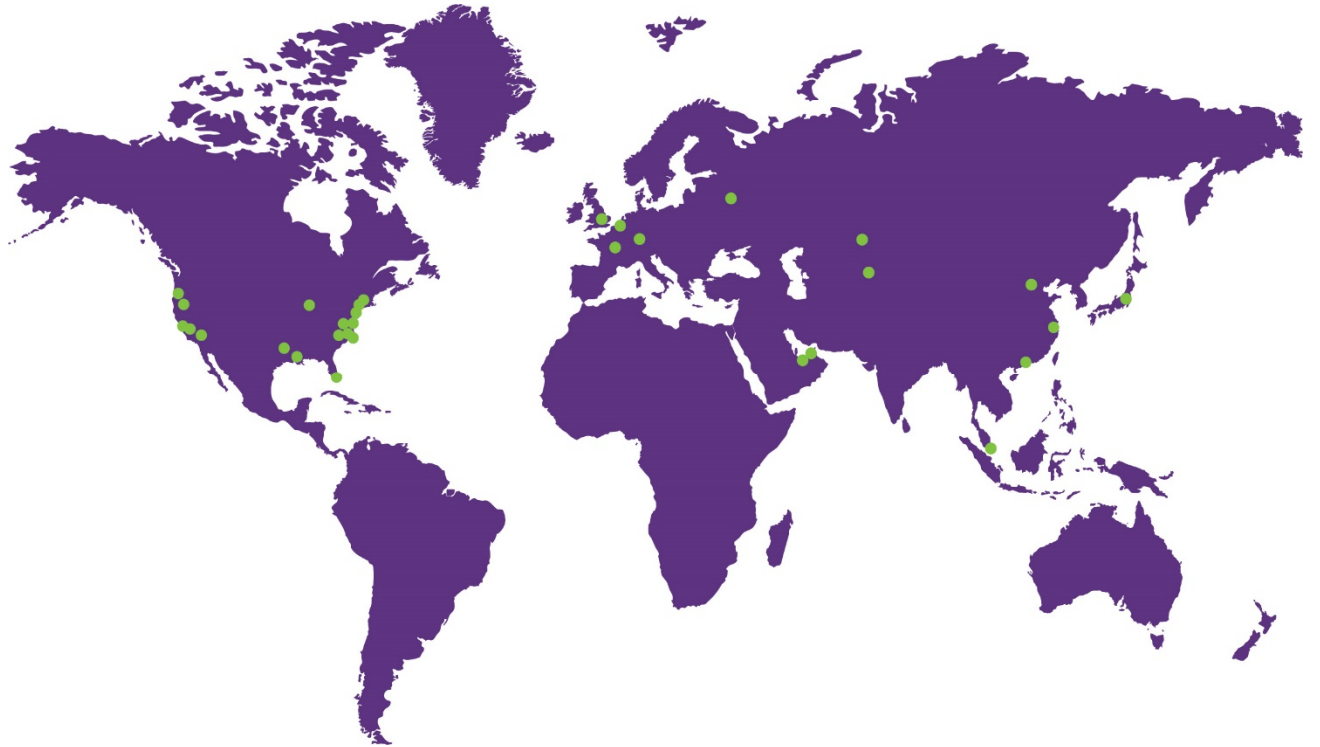


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