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NAVIGATING THE NEXT.

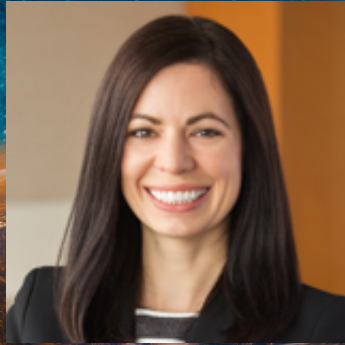
**Biweekly Webinar Series: Returning to Work
in California: Highlights of Major State and
Local Orders**

Daryl Landy, Nicole Beckley, and Thea Alli
March 17, 2021

Presenters



Daryl Landy



Nicole Beckley



Thea Alli

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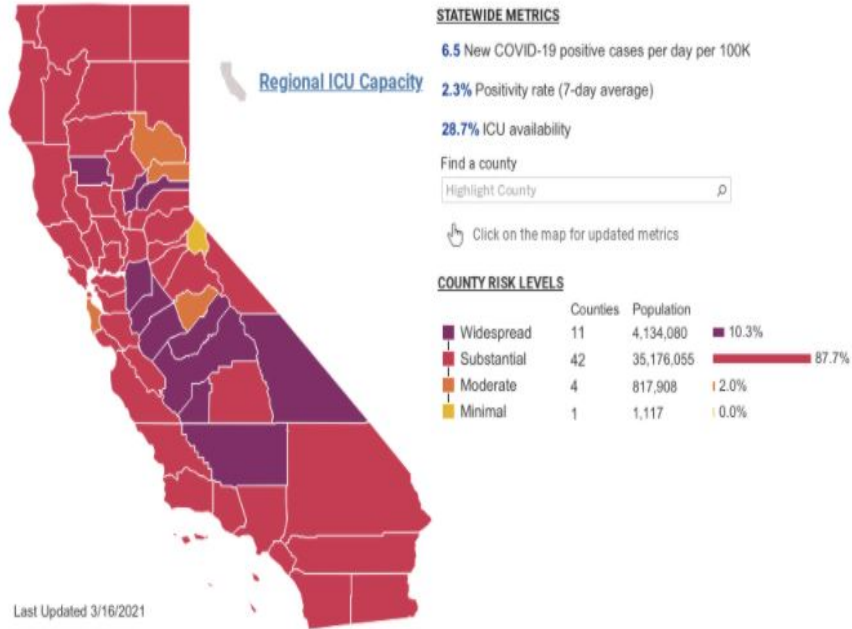
Return to Blueprint for a Safer Economy & County Tier Assignments

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California's Tier System

County risk level	New cases	Positive tests
WIDESPREAD Many non-essential indoor business operations are closed	More than 7 Daily new cases (per 100k)	More than 8% Positive tests
SUBSTANTIAL Some non-essential indoor business operations are closed	4-7 Daily new cases (per 100k)	5 – 8% Positive tests
MODERATE Some indoor business operations are open with modifications	1 – 3.9 Daily new cases (per 100k)	2 – 4.9% Positive tests
MINIMAL Most indoor business operations are open with modifications	Less than 1 Daily new cases (per 100k)	Less than 2% Positive tests

California's Tier System



Red Tier:

- San Francisco – 2/23
- Santa Clara – 3/2
- Los Angeles – 3/15
- Ventura – 3/16
- Santa Barbara – 3/17
- Riverside – 3/17
- San Bernardino – 3/14

Orange Tier:

- San Mateo – 3/16

California's Tier System – Permissible Activity

SECTORS	Tier 1 Widespread (Case Rate >7 and Test Positivity >8%)	Tier 2 Substantial (Case Rate 4-7 and Test Positivity 5-8%)	Tier 3 Moderate (Case Rate 1-3.9 and Test Positivity 2-4.9%)	Tier 4 Minimal (Case Rate <1 and Test Positivity <2%)
Post 2 million administered in first Healthy Places Index quartile	CR >10	CR 4-10	CR 1-3.9	CR <1
Post 4 million administered in first Healthy Places Index quartile	CR >10	CR 6-10	CR 2-5.9	CR <2
Bars (where no meal provided; follow restaurant guidance where meal is provided)	Closed	Closed	Open outdoors with modifications	Effective March 13, 2021: Open indoors with modifications <ul style="list-style-type: none"> • Max 25% capacity indoors, or 100 people, whichever is fewer
Family Entertainment Centers	Outdoor only with modifications e.g. <ul style="list-style-type: none"> • Kart Racing • Mini Golf • Batting Cages 	Outdoor only with modifications e.g. <ul style="list-style-type: none"> • Kart Racing • Mini Golf • Batting Cages 	Open indoors for naturally distanced activities with modifications <ul style="list-style-type: none"> • Max 25% capacity • Bowling Alleys 	Open indoors for activities with increased risk of proximity and mixing with modifications <ul style="list-style-type: none"> • Max 50% capacity • Arcade Games • Ice and roller skating • Indoor playgrounds
Cardrooms, Satellite Wagering	Outdoor only with modifications	Outdoor only with modifications	Open indoors with modifications <ul style="list-style-type: none"> • Max 25% capacity 	Open indoors with modifications <ul style="list-style-type: none"> • Max 50% capacity
Offices	Remote	Remote	Open indoors with modifications <ul style="list-style-type: none"> • Encourage telework 	Open indoors with modifications <ul style="list-style-type: none"> • Encourage telework

- [Link to Full Chart](#)

California's Tier System – Searching for Status of Activity in Each County

Find the status of activities in your county

County

San Francisco

Q Clear

Activity

Enter a business or activity

GET LATEST RISK LEVELS

San Francisco

MINIMAL

Most indoor business operations are open with modifications. [Understand the data.](#)

Counties can restrict further. Check your [county's website](#).

Office workspaces

Tier status:

Widespread (purple): Remote work

Substantial (red): Remote work

Moderate (orange): Indoor with modifications, encourage telework

Minimal (yellow): Indoor with modifications, encourage telework

Follow this [guidance for office workspaces](#) to create a safer environment for workers.

Review the guidance, prepare a plan, and post the [checklist for office workspaces](#) in your workplace to show customers and employees that you've reduced the risk and are open for business.

Faith-based office workspaces can reopen within the following parameters:

1. Faith-based facilities are considered "offices" only for those employed by the organization and where the facility is their regular place of work.
2. The employer should implement state guidance relating to offices before reopening the facility for employees.
3. This designation does not permit gatherings of non-employees, such as the organization's congregation.

California Hazard ("Hero") Pay Update

The background of the slide is a composite image. At the top, there's a dark blue space scene filled with stars. Below that, the curved horizon of the Earth is visible, glowing with a bright orange and yellow light from the sun. Underneath the horizon, a city at night is shown with its lights and buildings. Overlaid on the city and the horizon is a network of glowing blue lines connecting various points, resembling a digital or data network.

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California Hazard Pay – What Is It?

- Also known as “Hero Pay”
- Typically additional hourly pay for lower wage, frontline workers
- Several California cities and counties introduced emergency hazard pay ordinances, particularly for large grocery and drugstore workers
- The ordinances generally mandates employers to provide employees with additional pay, typically \$4-\$5 per hour, on top of their base pay

California Hazard Pay – Key Requirements and Developments

- Employer additional requirements:
 - Prohibited from reducing employee hours and compensation
 - Must inform employees of their rights under the ordinance with a written notice
 - Must retain records that document compliance for a period of 2 years
- Expansion of hazard pay to other sectors (e.g., drugstores, general retail, restaurants, and agriculture)
- Some hazard pay ordinances include up to 4 hours of paid leave for employees to receive the vaccine.
- Lawsuits in Long Beach, Montebello, and Oakland
 - The District Court ruled in the City of Long Beach’s favor and denied the California Grocers’ Association’s preliminary injunction motion.
 - The CGA has appealed the decision to the Ninth Circuit.

California Hazard Pay – Who Has Adopted & Who is Considering It?

• **Cities with Hazard Pay:**

- Berkeley
- Coachella
- Daly City
- Irvine
- Long Beach
- Los Angeles
- Montebello
- Oakland
- Pomona
- San Jose
- San Leandro
- San Mateo
- Santa Ana
- Santa Monica
- South San Francisco
- West Hollywood

• **Counties with Hazard Pay:**

- Los Angeles (unincorporated areas)
- San Francisco
- Santa Clara (unincorporated areas)

• **Cities Considering it:**

- Belmont
- Costa Mesa
- Fresno
- Redwood City
- San Carlos

Proposed COVID- Related Legislation

The background of the slide is a composite image. At the top, there is a dark blue space filled with stars and a glowing, multi-colored horizon line (orange, yellow, blue) that suggests a celestial body or a digital interface. Below this, a night view of a city is shown, with numerous skyscrapers and streetlights. Overlaid on the city is a network of glowing lines and nodes, primarily in shades of blue and orange, which represents a global or digital network. The overall aesthetic is futuristic and high-tech.

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Proposed COVID-Related Legislation

- AB 1028 - Telework Flexibility Act
- AB 1313 - Business Immunity from Civil Liability
- AB 1074 - Rehiring & Retention of Displaced Workers
- AB 654 - Exposure Notifications
- AB 757 - Request for Positive Test or Diagnosis Documentation
- AB 84 / SB 95 - Supplemental Paid Sick Leave for Food Sector Workers
- AB 845 - COVID-19 Presumption with Disability Retirement
- SB 606 - Workplace OSHA Citations



COVID-19 Vaccination and the Fair Employment and Housing Act (FEHA)

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COVID-19 Vaccination and FEHA

- An employer may require its employees to be vaccinated against COVID-19
- FEHA's protections against discrimination, harassment, and retaliation cover employees who decline to get vaccinated due to:
 - A disability or medical condition, or
 - A sincerely-held religious belief
- An employer that requires vaccination against COVID-19 in its workforce must reasonably accommodate employees with known disabilities
 - If an employee objects to vaccination on the basis of disability, the employer must engage in the interactive process with, and reasonably accommodate the employee

COVID-19 Vaccination and FEHA

- An employer that requires vaccination against COVID-19 in its workforce must reasonably accommodate an employee's sincerely-held religious beliefs and practices
- The employer should engage in an interactive process with the employee similar to the disability context
 - Accommodations may include:
 - Job restructuring;
 - Job reassignment; or
 - Modification of work practice.
- If the employer can show that an accommodation imposes an undue hardship, it may exclude the employee from the workplace

COVID-19 Vaccination and FEHA

- FEHA does not protect an employee who objects to being vaccinated against COVID-19 because they do not “trust that the vaccine is safe.”
 - The employer is not obligated to reasonably accommodate the employee.
- If an employer requires its employee to receive a vaccination against COVID-19 administered by a third-party, the employer may request that the employee provide proof of vaccination.
 - Any record of employee or applicant vaccination must be maintained as a confidential medical record.
 - Proof of vaccination should be very limited.
 - It should only document whether the employee received the vaccine.
 - It should not include any medical information (i.e. pre-vaccination screening questions and answers which would likely elicit information about an employee’s disability.)



Frequently Asked Questions Regarding Time Off for COVID- 19 Vaccinations

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FAQs Re Time Off for COVID-19 Vaccinations

- Are employers required to compensate employees for the time spent obtaining a COVID-19 vaccination?
 - Yes, if the employer requires an employee to obtain a COVID-19 vaccination then it must pay for the time it takes for the vaccination, including travel time.
- If an employer does not mandate a COVID-19 vaccination, can an employee use regular paid sick leave for time spent being vaccinated?
 - Yes, regular paid sick leave may be used for preventive care, which includes medical testing and vaccines.
 - Employers should consider providing a flexible leave policy for those employees who may have post-vaccination side effects.
- Consider whether to provide additional benefits to employees who need time off for vaccine side effects.

Return to Work Resources for Employers

View a list of the [return to work resources](#) that 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](#).

[Questions on Vaccines?](#)



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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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](http://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.

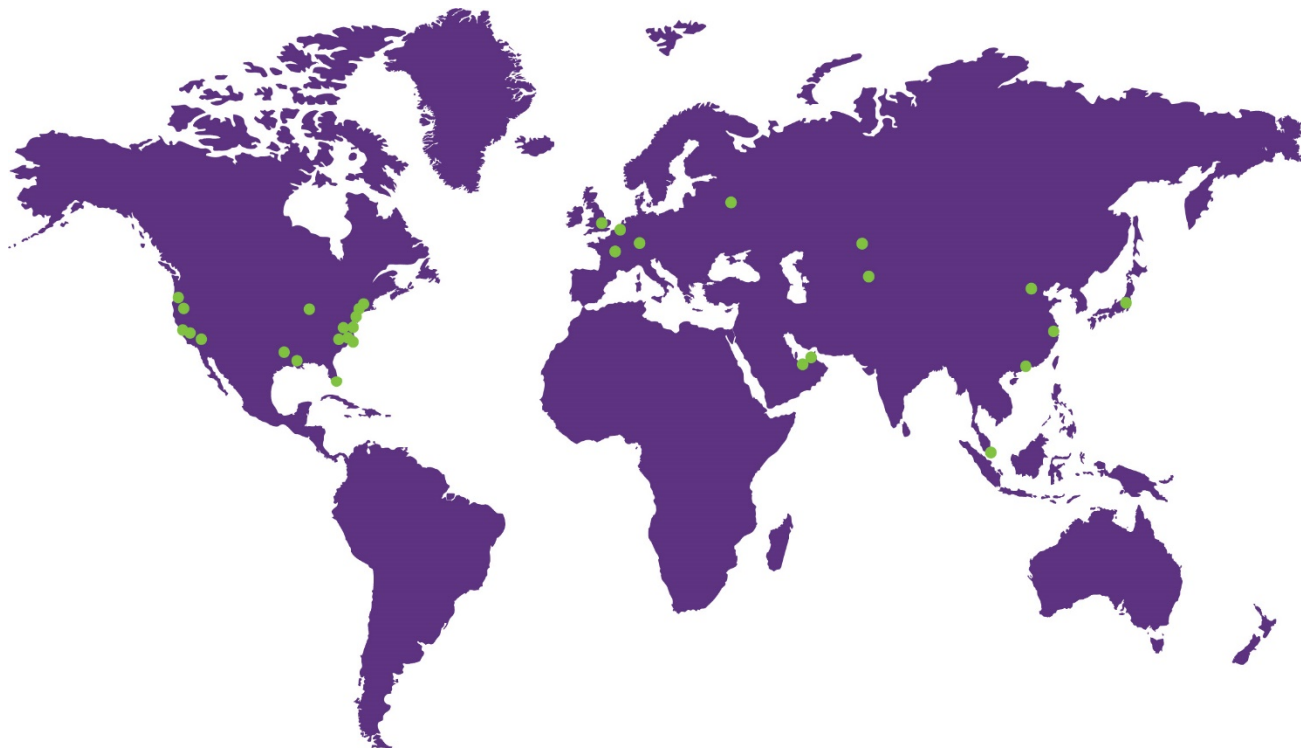


Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

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Brussels
Century City
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Hong Kong*
Houston
London
Los Angeles
Miami
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New York
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