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# NAVIGATING THE NEXT.

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

Kate McGuigan, Claire Lesikar  
April 28, 2021



# Presenters



**Kate McGuigan**



**Claire Lesikar**

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# COVID-19 Supplemental Paid Sick Leave

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# Labor Commissioner Launches COVID-19 Paid Sick Leave Tool

- The tool, available in English and Spanish, is meant to help workers and employers confirm eligibility for COVID-19 supplemental paid sick leave.
- The tool provides short, simple questions to determine the impact of COVID-19 on the ability of an employee to work.
- Workers and employers need not provide a name or other personal details to determine eligibility.
- For workers – there is information about:
  - Required circumstances for taking COVID-19 leave
  - How to request paid sick leave from an employer
  - Where to file a claim if the employee was not paid for leave
  - What rights an employee has as a covered employee



# Labor Commissioner Launches COVID-19 Paid Sick Leave Tool

- Employers can find information about:
  - When employers must pay COVID-19 sick leave
  - Calculating leave time for full-time and part-time employees
  - Requirements for informing employees about the new law
  - How to calculate and list paid leave on pay stubs
- With the rollout of this new tool, the Labor Commissioner reminded employers that employees may be eligible for workers' compensation benefits if they believe that a COVID-19 illness is work-related.
- Available at: <https://www.dir.ca.gov/dlse/covid-psl/>





# DOL/WHD Outreach Initiative and Guidance

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# DOL Essential Workers/Essential Protections Updated

- DOL initiative to “ensure that workers know about the wage and hour laws that protect them – and how to contact [the DOL] to get help if they need it.”
- On April 26, 2021, this DOL blog was updated to link to existing DOL pages regarding the FLSA and FMLA
- Links to details regarding a series of nationwide webinars the DOL is hosting “to educate worker advocates, employers and other stakeholders answering questions that have arisen during the pandemic.” These are specifically directed to workers in grocery stores, health care, delivery services, retail establishments, agriculture, and other essential industries.”



# DOL Essential Workers/Essential Protections Updated

- New FAQs added as well
  - Time nonexempt employees spend waiting for, and undergoing, such activities is compensable when it occurs during the workday.
  - When such activities are required before the start of the workday as a condition of entering a job site, or during an off-day for the worker, the DOL confirmed that the time is compensable if it is integral and indispensable to the worker's job, which the DOL found to be the case with respect to nurses and front-line grocery workers because they provide "direct patient care services" and have "significant interaction with the general public," respectively.
  - In both examples, the DOL commented that the activities were necessary for the workers to perform their jobs safely and effectively during the pandemic.

# Vaccinations



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# California COVID-19 Status

- As of April 27:
  - California has 3,631,740 confirmed cases to date. Numbers may not represent true day-over-day change as reporting of test results can be delayed.
  - There were 2,116 newly recorded confirmed cases on Sunday.
  - The 7-day positivity rate is 1.2%.
  - There have been 59,327,368 tests conducted in California. This represents an increase of 231,651 during the prior 24-hour reporting period.
  - There have been 60,203 COVID-19 deaths since the start of the pandemic.
- As of April 26, providers have reported administering a total of 28,398,915 vaccine doses statewide. The CDC reports that 35,058,910 doses have been delivered to entities within the state.

# OSHA Guidance on Vaccination Reporting

- On April 20, OSHA issued guidance as to when an employer must record an adverse reaction to a COVID-19 vaccine in OSHA logs.
- The answer turns on whether the vaccine is required or recommended by the employer.
- The adverse reaction is recordable if the vaccine is required as a condition of employment and:
  - Led to the employee missing more than one day of work,
  - Required medical treatment beyond first aid, or
  - Resulted in restricted work or transfer to another job.
- If the employer recommends the vaccine but does not require it, the adverse reaction is not recordable.



# OSHA Guidance on Vaccination Reporting

- Note that the vaccine must truly be voluntary
  - Employee' can choose not to get the vaccine
    - Cannot affect performance rating or advancement
    - Cannot be any other job repercussion
- No requirement to record adverse reactions if employer recommends, but does not require, the vaccine, but:
  - Makes the vaccine available at the workplace
  - Makes arrangements for off-site vaccines
  - Makes the vaccine a part of voluntary health and wellness program
- Caution – providing incentives for vaccines; prohibiting unvaccinated employees from working in particular positions

# Bills Banning Employer Vaccine Mandates in the Ninth Circuit

- Oregon Revised Statute 433.416: Prohibits employers from requiring vaccinations as a condition of employment for healthcare workers, unless vaccination is otherwise required by federal or state law.
- Montana (HB 702): Pending bill would prohibit workplaces from requiring vaccinations or an immunity passport as a condition of employment. Sent for enrollment on April 26.
- Colorado (HB 21-1191): Pending bill would prohibit employers, including licensed healthcare facilities, from taking adverse actions against employees or applicants based on their COVID-19 vaccination status.
- Alaska (HB 175): Pending bill would prohibit employers from requiring employees or applicants to undergo or prove receipt of vaccination as a condition of employment.
- Washington
  - HB 1305: Pending bill would prohibit employers from requiring employees to submit to vaccination as a condition of employment.
  - HB 1065: Pending bill would prohibit employers from requiring the COVID-19 vaccine as a condition of employment unless the vaccine meets certain standards, including full FDA approval and testing regarding long-term effects and efficacy.

# Right to Recall

The image is a composite graphic. The background is a deep space scene with a starry field and a bright, glowing sun or star on the horizon, creating a lens flare effect. In the foreground, a cityscape is visible at night, with lights from buildings and streets. Overlaid on the city and extending into the space is a network of glowing lines and nodes, resembling a digital or communication network. The lines are primarily blue and orange, connecting various points across the scene.

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# New Right-to-Recall Local Ordinances in California

- San Francisco: Further extended to May 16, 2021.
- Petaluma and Carlsbad: Covers hotel workers only.
- Monterey County: Pending proposed ordinance to work in tandem with SB 93.
- Santa Rosa: Discussing a proposed ordinance for hospitality workers.
- Long Beach: Covers hotel workers and janitorial employees of commercial properties.
- Los Angeles City: Covers certain employees of airport, commercial property, event center, and hotel employers.
- Los Angeles County: Covers employees of commercial property and hotel employers.
- Oakland: Covers employees of airport hospitality, airport service provider, event center, hotel, and restaurant employers.
- San Diego: Covers certain employees of commercial property, hotel, or event center employers.
- Santa Clara: Covers hotel workers and related workers only.

# COVID-19 Litigation

The image is a composite graphic. The background is a deep blue space filled with stars. A bright, glowing sun or star is positioned on the horizon line, creating a lens flare effect. Below the horizon, a cityscape is visible at night, with lights from buildings and streets. Overlaid on the city and extending across the entire image is a network of glowing lines and nodes, resembling a digital or data network. The lines are primarily blue and orange, connecting various points across the scene.

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# COVID-19 Litigation Update

- At least two cases have been filed against employers alleging that an employee was infected by COVID-19 at work and, as a result, infected a nonemployee spouse
  - Injury allegedly based on failure to implement workplace safety measures and misrepresentations of COVID-19 risk to employees and families so that employees would continue to work
  - Cases have been permitted to proceed following denial of motions to dismiss
- Other litigation and claims
  - Union complaints that employers took action during pandemic to undermine unions
  - Pandemic layoffs as pretext for discrimination
  - Whistleblower claims for complaints about PPE and other safety issues
  - Failure to pay for screening and monitoring time



# 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"><li>We can also provide weekly updates</li></ul>
	We can also create customized charts of specific orders or just reopening orders. Examples: <ul style="list-style-type: none"><li>Requirements Regarding Temperature Screens and Symptom Screens</li><li>Requirements for PPE or Face Coverings</li></ul>
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 "Subscribe" button.

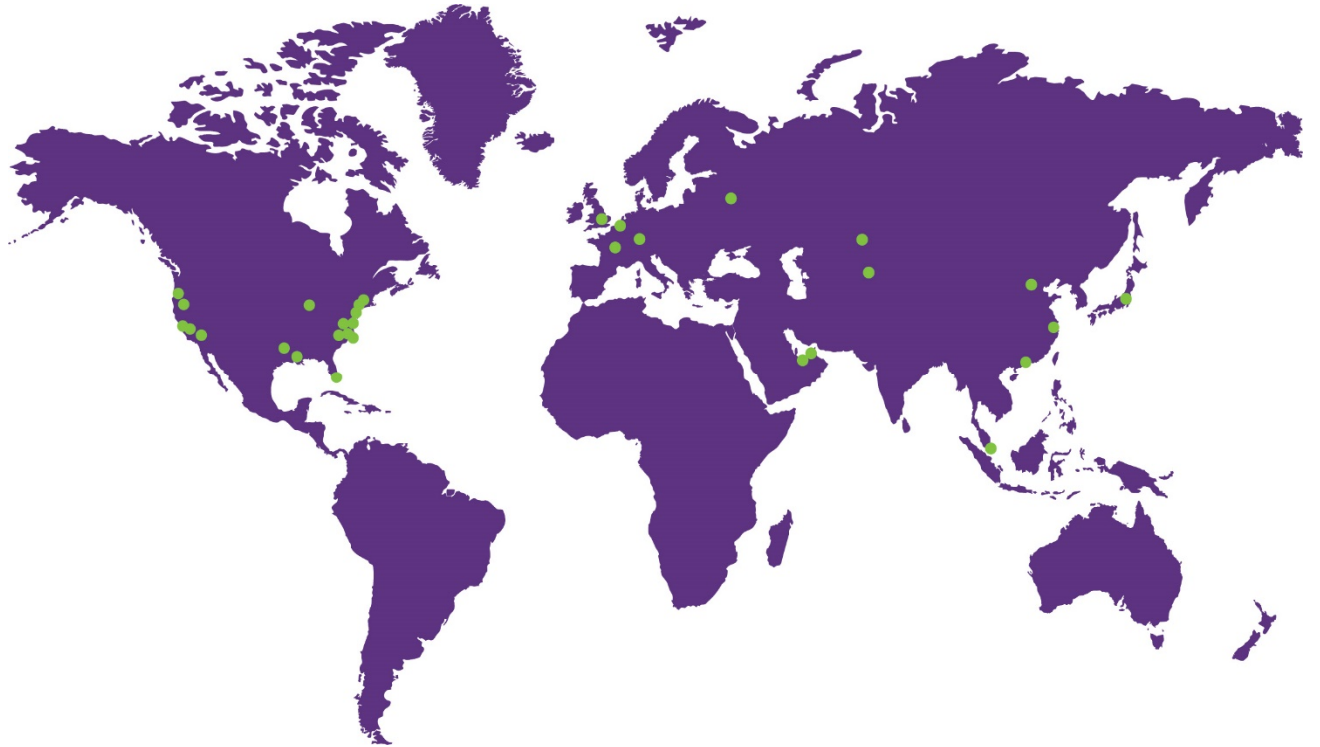


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