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# NAVIGATING THE NEXT.

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

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# Presenters



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# Overview of State Directives

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, casting a warm orange and yellow light across the scene. Below the horizon, a cityscape is visible at night, with numerous buildings and streets illuminated. Overlaid on the city and extending upwards is a network of glowing lines and nodes, resembling a digital or data network. The lines are primarily blue and white, with some nodes glowing in orange and red. The overall composition suggests a global or digital theme, consistent with the title 'Overview of State Directives'.

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# California's Tier System

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

# California's Tier System – Permissible Activity

SECTORS	Widespread Tier 1	Substantial Tier 2	Moderate Tier 3	Minimal Tier 4
Restaurants	Outdoor Only with modifications	Open indoors with modifications <ul style="list-style-type: none"> <li>Max 25% capacity or 100 people, whichever is fewer</li> </ul>	Open indoors with modifications <ul style="list-style-type: none"> <li>Max 50% capacity or 200 people, whichever is fewer</li> </ul>	Open indoors with modifications <ul style="list-style-type: none"> <li>Max 50% capacity</li> </ul>
Wineries	Outdoor Only with modifications	Outdoor Only with modifications	Open indoors with modifications <ul style="list-style-type: none"> <li>Max 25% capacity indoors, or 100 people, whichever is fewer</li> </ul>	Open indoors with modifications <ul style="list-style-type: none"> <li>Max 50% capacity or 200 people indoors, whichever is fewer</li> </ul>
Bars, Breweries, and Distilleries (where no meal provided) (follow restaurants where meal is provided)	Closed	Closed	Open Outdoors with modifications	Open indoors with modifications <ul style="list-style-type: none"> <li>Max 50% capacity</li> </ul>
Family Entertainment Centers	Outdoor Only with modifications e.g. <ul style="list-style-type: none"> <li>Kart Racing</li> <li>Mini Golf</li> <li>Batting Cages</li> </ul>	Outdoor Only with modifications e.g. <ul style="list-style-type: none"> <li>Kart Racing</li> <li>Mini Golf</li> <li>Batting Cages</li> </ul>	Open Indoors for naturally distanced activities with modifications <ul style="list-style-type: none"> <li>Max 25% capacity</li> <li>Bowling Alleys</li> <li>Climbing Walls</li> </ul>	Open indoors for activities with increased risk of proximity and mixing with modifications <ul style="list-style-type: none"> <li>Max 50% capacity</li> <li>Arcade Games</li> <li>Ice and roller skating</li> <li>Indoor playgrounds</li> </ul>

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

## Find the status of activities in your county

County

Activity

San Francisco

Q Clear

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's Tier System – Monitoring Potential Movement Among Tiers

County	Date of Tier Assessment	Updated Tier Assignment, 10-26-20 Assessment	Previous Tier Assignment, 10-19-20 Assessment	First Date in Current Tier	Number of Weeks in Current Tier	Number of Consecutive Weeks Meeting Criteria for Less Restrictive Tier	Number of Consecutive Weeks Meeting Criteria for More Restrictive Tier
Alameda	10-26-2020	3	3	10-12-2020	2	0	0
Contra Costa	10-26-2020	3	2	10-26-2020	0	0	0
Fresno	10-26-2020	2	2	09-28-2020	4	0	0
Imperial	10-26-2020	1	1	08-31-2020	8	0	NA
Kern	10-26-2020	2	2	10-12-2020	2	0	0
Los Angeles*	10-26-2020	1	1	08-31-2020	8	0	NA
Orange	10-26-2020	2	2	09-07-2020	7	0	0
Riverside	10-26-2020	1	1	10-19-2020	1	0	NA
Sacramento	10-26-2020	2	2	09-28-2020	4	0	0
San Bernardino	10-26-2020	1	1	08-31-2020	8	0	NA
San Diego	10-26-2020	2	2	08-31-2020	8	0	0
San Francisco***	10-26-2020	4	4	10-19-2020	1	NA	0
San Mateo*	10-26-2020	3	2	10-26-2020	0	0	0
Santa Barbara	10-26-2020	2	2	09-28-2020	4	0	0
Santa Clara	10-26-2020	3	3	10-12-2020	2	0	0
Santa Cruz	10-26-2020	3	2	10-26-2020	0	0	0

# Sutter County Superior Court Decision re Gov. Newsom's Executive Power

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SUTTER**

**FILED**  
NOV 02 2020  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SUTTER  
CLERK OF THE COURT  
By  Deputy

**JAMES GALLAGHER and KEVIN  
KILEY**

Plaintiffs,

Case No. CVCS20-0912

-vs.-

**TENTATIVE DECISION FOLLOWING  
COURT TRIAL**

**GAVIN NEWSOM, in his official capacity  
as Governor of the State of California**

Defendant.

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This cause came on regularly for court trial on October 21, 2020. The parties introduced documentary evidence pursuant to stipulation set forth in Plaintiffs' and Defendant's Statement of Evidence and Exhibits filed October 16, 2020. No witnesses were called. The cause was argued and submitted for decision. The Court, having considered the evidence and the arguments of counsel, issues the following Tentative Decision.

1. ON THE ISSUE OF WHETHER THE CAUSE IS MOOT, THE COURT FINDS THE CAUSE IS NOT MOOT.



# California's New COVID Testing Laboratory

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# California's New COVID Testing Laboratory

- Will begin processing tests this month.
- Will help with likely spike in testing during flu season.
- Per-test cost would be around \$30.
- Will recoup costs from health insurance companies or other payers.



# Remote Work Considerations



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# The Rise of COVID-19-Related Employment Claims

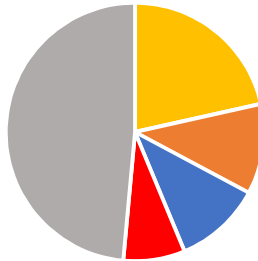
- As of two weeks ago, over 805 cases have been filed in court relating to COVID-19.
  - This does not include agency filings or union grievances

## Type of Claim



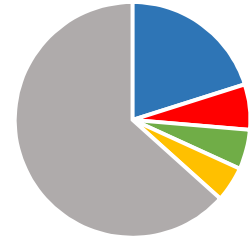
Wrongful Termination (220)
Workplace Conditions (207)
Discrimination (180)
Leaves of Absence (107)
Other (91)

## State Claim Filed In



California (173)	New Jersey (91)
Florida (88)	New York (62)
Other (391)	

## Industry



Healthcare (162)	Manufacturing (50)
Hospitality (44)	Essential Retail (39)
Other (510)	

# Remote Work: Importance of Setting Expectations

Whether voluntary  
or mandatory  
(important for  
expense issues)

Productivity and  
compensation  
expectations

Work-hour  
expectations

Meal/rest break  
expectations

Recordkeeping  
expectations

Workers'  
compensation/OSHA  
issues

Protecting  
proprietary  
information

Expectations as to  
supplying equipment

Expense  
reimbursement  
obligations

# Remote Work and Reopening: Wage and Hour Considerations

- Compensation for new COVID-related tasks
- Reporting time and/or predictive scheduling obligations
- Regular rate calculations
- Exemptions for employees classified as exempt
- Bonus and incentive plans
- Expense reimbursement

# Remote Work: Expense Reimbursement Standards

## California Labor Code

### § 2802:

- Must reimburse if activity was within the course and scope of employment
- Expenditures must be (1) reasonable and (2) necessary

# Remote Work: Expense Reimbursement Amount

- Required to reimburse for a “reasonable percentage” of mixed use expenses (home internet and phone)
- Can be a reasonable estimate rather than the exact expenses, provided:
  - Some method or formula used
  - Opportunity to request additional reimbursement



# Remote Work: Issues Relating to Work Hours

- Set established work hours and workday start and end times
- Procedures for variance from expected work hours
- Mechanisms for ensuring employees are actively working

The image shows the cover of a report. At the top, there is an orange bar with the text 'covid19.ca.gov' in white. Below this is a dark blue section with the title 'California's Roadmap to Modify the Stay-at-Home Order: Family Friendly Practices for Employers' in white. The right side of the cover is a lighter blue section with a grid of small white dots. At the bottom, there is white text on a dark blue background: 'Release date: June 5, 2020' and 'Recommended effective date no sooner than: June 12, 2020'.

covid19.ca.gov

**California's  
Roadmap to  
Modify the Stay-  
at-Home Order:**  
Family Friendly  
Practices for  
Employers

Release date: **June 5, 2020**

Recommended effective date  
no sooner than: **June 12, 2020**

# Remote Work: Compensation Issues for Nonexempt Employees

- Audit timekeeping systems
- Employee attestations/acknowledgement of accurate recording under circumstances
- Beware of potential triggers with remote work
- Review regular rate calculations

**NOW. NORMAL. NEXT.**

# **Prop 22 – App-Based Driver Ballot Initiative**

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# Prop 22 – App-Based Driver Ballot Initiative

- “Notwithstanding any other provision of law, . . . an app-based driver is an independent contractor and not an employee or agent with respect to his or her relationship with a network company if the following conditions are met:
  - (a) The network company does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the app-based driver must be logged into the network company's online-enabled application or platform.
  - (b) The network company does not require the app-based driver to accept any specific rideshare service or delivery service request as a condition of maintaining access to the network company's online-enabled application or platform.
  - (c) The network company does not restrict the app-based driver from performing rideshare services or delivery services through other network companies except during engaged time.
  - (d) The network company does not restrict the app-based driver from working in any other lawful occupation or business.” Sec. 7451.

# 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"><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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[www.morganlewis.com](http://www.morganlewis.com)

# 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](#) or call +1.213.612.7215.

# Post-Election Workplace Policy: Outlook for 2021 – Webinar Series

- **November 10** – The EEOC: What's on the Horizon
- **November 17** – The NLRB at Work: Regulating Labor-Management Relations, Unions, Employers, and More
- **December 1** – The DOL and Workplace Compliance Standards: What Does the Future Hold?
- **December 8** – Workplace Policy in 2021: The Big Picture



# 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.



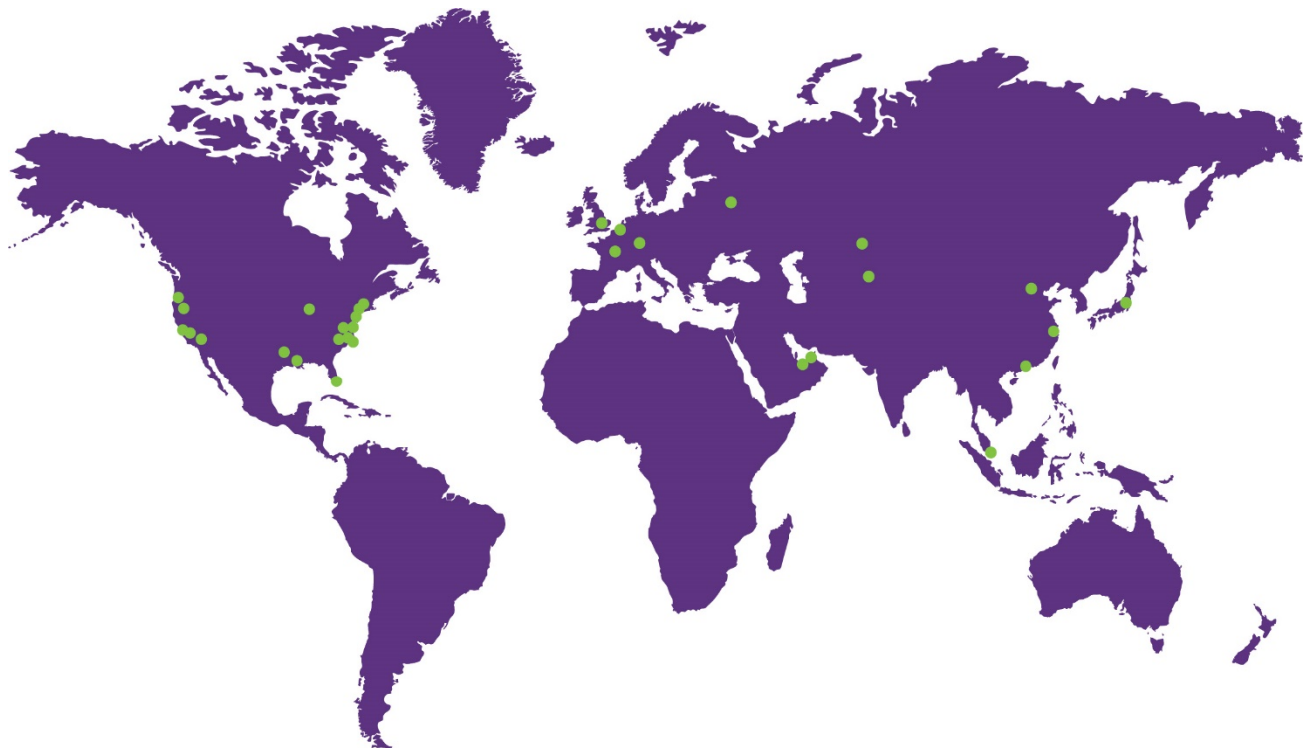


## Our Global Reach

Africa  
Asia Pacific  
Europe  
Latin America  
Middle East  
North America

## Our Locations

Abu Dhabi  
Almaty  
Beijing\*  
Boston  
Brussels  
Century City  
Chicago  
Dallas  
Dubai  
Frankfurt  
Hartford  
Hong Kong\*  
Houston  
London  
Los Angeles  
Miami  
Moscow  
New York  
Nur-Sultan  
Orange County  
Paris  
Philadelphia  
Pittsburgh  
Princeton  
San Francisco  
Shanghai\*  
Silicon Valley  
Singapore\*  
Tokyo  
Washington, DC  
Wilmington



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