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

Kate McGuigan, Lauren Nikkhah, Grace Tse

September 23, 2020

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Presenters



Kate McGuigan



Lauren Nikkhah



Grace Tse

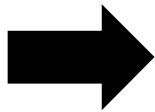
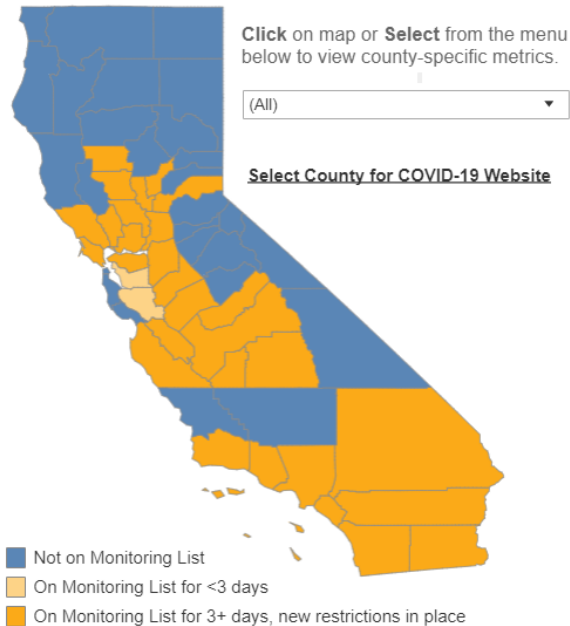
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Overview of State Directives

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Governor's Plan: Monitoring List > 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

Tier System

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Current tier assignments as of September 22, 2020

All data and tier assignments are updated weekly every Tuesday.

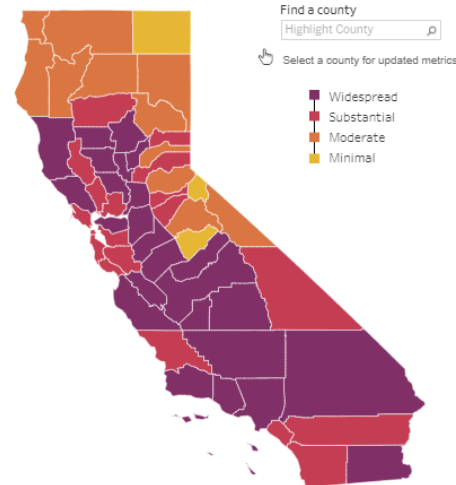
Statewide metrics

6.4

New COVID-19 positive cases per day per 100K

3.6%

Positivity rate



Permissible Activity in Each Tier/County

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"> Max 25% capacity or 100 people, whichever is fewer 	Open indoors with modifications <ul style="list-style-type: none"> Max 50% capacity or 200 people, whichever is fewer 	Open indoors with modifications <ul style="list-style-type: none"> Max 50% capacity
Wineries	Outdoor Only with modifications	Outdoor Only with modifications	Open indoors with modifications <ul style="list-style-type: none"> Max 25% capacity indoors, or 100 people, whichever is fewer 	Open indoors with modifications <ul style="list-style-type: none"> Max 50% capacity or 200 people indoors, whichever is fewer
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"> Max 50% capacity
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 Climbing Walls 	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

Searching for Status of Activity in Each County

Find the status of activities in your county

County	Activity
<input type="text" value="San Francisco"/>	<input type="text" value="Offices (non-essential businesses)"/>

[GET LATEST STATUS](#)

San Francisco

SUBSTANTIAL

Some non-essential indoor business operations are closed. [Understand the data.](#)

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

Offices (non-essential businesses)

Can work remotely

See guidance for [Office workspaces](#)

Monitoring Potential Movement Among Tiers

California Blueprint Data Chart

County	Date of Tier Assessment	Updated Overall Tier Status, 09-21-2020 Assessment	First Date in Current Tier	Number of Weeks Meeting Criteria for Less Restrictive Tier	Number of Weeks Meeting Criteria for More Restrictive Tier	Previous Overall Tier Status, 09-14-2020 Assessment
Alameda	09-21-2020	2	09-21-2020	0	0	1
Contra Costa	09-21-2020	1	08-31-2020	1	0	1
Los Angeles	09-21-2020	1	08-31-2020	1	0	1
Orange	09-21-2020	2	09-07-2020	1	0	2
Riverside	09-21-2020	2	09-21-2020	0	0	1
Sacramento	09-21-2020	1	08-31-2020	1	0	1
San Bernardino	09-21-2020	1	08-31-2020	1	0	1
San Diego	09-21-2020	2	08-31-2020	0	0	2
San Francisco*	09-21-2020	2	09-21-2020	0	0	2
San Mateo	09-21-2020	2	09-21-2020	0	0	1
Santa Barbara	09-21-2020	1	08-31-2020	1	0	1
Santa Clara	09-21-2020	2	09-07-2020	0	0	2
Santa Cruz	09-21-2020	2	09-07-2020	0	0	2

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**AB 1867:
COVID-19 Supplemental
Paid Sick Leave
Requirements**

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AB 1867 COVID-19 Supplemental Paid Sick Leave – Filling in Gaps of FFCRA

AB 1867 was intended to “fill in the gaps” of COVID-19 paid sick leave provided under the federal Families First Coronavirus Response Act (FFCRA)

AB 1867 ***went into effect immediately***, and created two new sections of the Labor Code mandating COVID-19 Supplemental Paid Sick leave:

- **Cal. Lab. Code § 248**: codifies COVID-19 paid sick leave requirements for food sector workers originally granted by Governor’s Executive Order N-51-20
 - Retroactive to April 16, 2020 (date Executive Order went into effect)
- **Cal. Lab. Code § 248.1**: grants COVID-19 supplemental paid sick leave to many employees outside of food sector
 - Employers had just 10 days (until ***September 19***) to provide the required leave

LC 248.1 COVID-19 Supplemental Paid Sick Leave – Who's Covered?

We focus on Cal. Lab. Code § 248.1, which covers employees not considered to be “Food Sector Workers”

Generally covers 2 categories of employees:

- 1) Any person employed by a private company with 500+ employees who leaves his or her home or residence to perform work for the employer, and
- 2) Any person employed as a healthcare provider or emergency responder ***whose employer has elected to exclude the employee from emergency paid sick leave under the FFCRA***, and who leaves his or her home or residence to perform work for the employer
 - Includes employers with less than 500 employees
 - Includes private and public employers

Caution: Clause regarding leaving the employee's home/residence to perform work might not be as broad as most employers hope

LC 248.1 COVID-19 Supplemental Paid Sick Leave – Qualifying Reasons for Leave

Qualifying reasons for leave:

- 1) The worker is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- 2) The worker is advised by a healthcare provider to self-quarantine or self-isolate due to concerns related to COVID-19; or
- 3) The worker is prohibited from working by the covered worker's hiring entity due to health concerns related to the potential transmission of COVID-19.

Note:

- 3rd qualifying reason relatively unique compared to other prior COVID-19 supplemental paid sick leave laws
- Leave relating to unavailability of school or childcare provider not included

LC 248.1 COVID-19 Supplemental Paid Sick Leave - Amount of Leave Required

Full-Time / FT equivalent schedule

- 80 Hours
- Applies to “full time” employees or
- Employees scheduled to work, on average, 40+ hrs/week in the **2 weeks preceding** the date when the employee takes COVID-19 supplemental paid sick leave

Part-Time

- PT with regular schedules: total hours normally scheduled over 2 weeks
- Variable schedules: 14x the average number of hours worked each day in the 6 months preceding the date when the employee takes COVID-19 SPSL
- If employee has worked less than 14 days, then the total number of that the hours employee has worked for the company

LC 248.1 COVID-19 Supplemental Paid Sick Leave – Required Rate of Pay

Covered workers must be paid the highest of the following:

1. Covered worker's regular rate of pay for covered worker's last pay period, including pursuant to any CBA that applies. (Note that the regular rate of pay under the FLSA may not be the same as the regular rate of pay under California state law.)
2. State minimum wage
3. Local minimum wage

However, pay shall be capped at \$511/day or \$5,110 in the aggregate, which are the same cap amounts established by the FFCRA.

LC 248.1 COVID-19 Supplemental Paid Sick – Interaction with Other Forms of PSL

Interaction with Other Forms of PSL, Including Offset:

- COVID-19 supplemental PSL granted by AB 1867 is in addition to any “regular” PSL required under the California state PSL law, Cal. Lab. Code § 246.
- Employees can’t be required to use any other paid/unpaid leave, PTO, or vacation before using, or in lieu of using, COVID-19 supplemental PSL.
- ***Employers can offset supplemental paid sick leave hours previously provided*** for the above reasons, which was paid at no less than the rate required under the new law.
- If the employer provided supplemental paid leave between March 4, 2020 and September 9, 2020 at a rate lower than required under the new law, ***the employer may retroactively provide supplemental pay sufficient to make up the difference***

LC 248.1 COVID-19 Supplemental Paid Sick – Wage Statement & Notice Posting Requirements

Available leave to be displayed on or with wage statement:

- The amount of COVID-19 supplemental PSL available must be noted on a pay stub or a separate writing as provided in Cal. Lab. Code § 246 (i).

Notice Posting Required:

- The notice posting requirements under Cal. Lab. Code § 247 apply to COVID-19 supplemental paid sick leave granted under AB 1867.
- If there are any employees who do not frequent the workplace, the notice requirement can be satisfied by disseminating the notice electronically.
- The required poster for non–food sector workers is available here: <https://www.dir.ca.gov/dlse/COVID-19-Non-Food-Sector-Employees-poster.pdf>

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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Additional Resources

Find resources on how to cope with the postpandemic reality on our [Now. Normal. Next. page](#) and our [COVID-19 page](#) to help keep you on top of developments as they unfold.

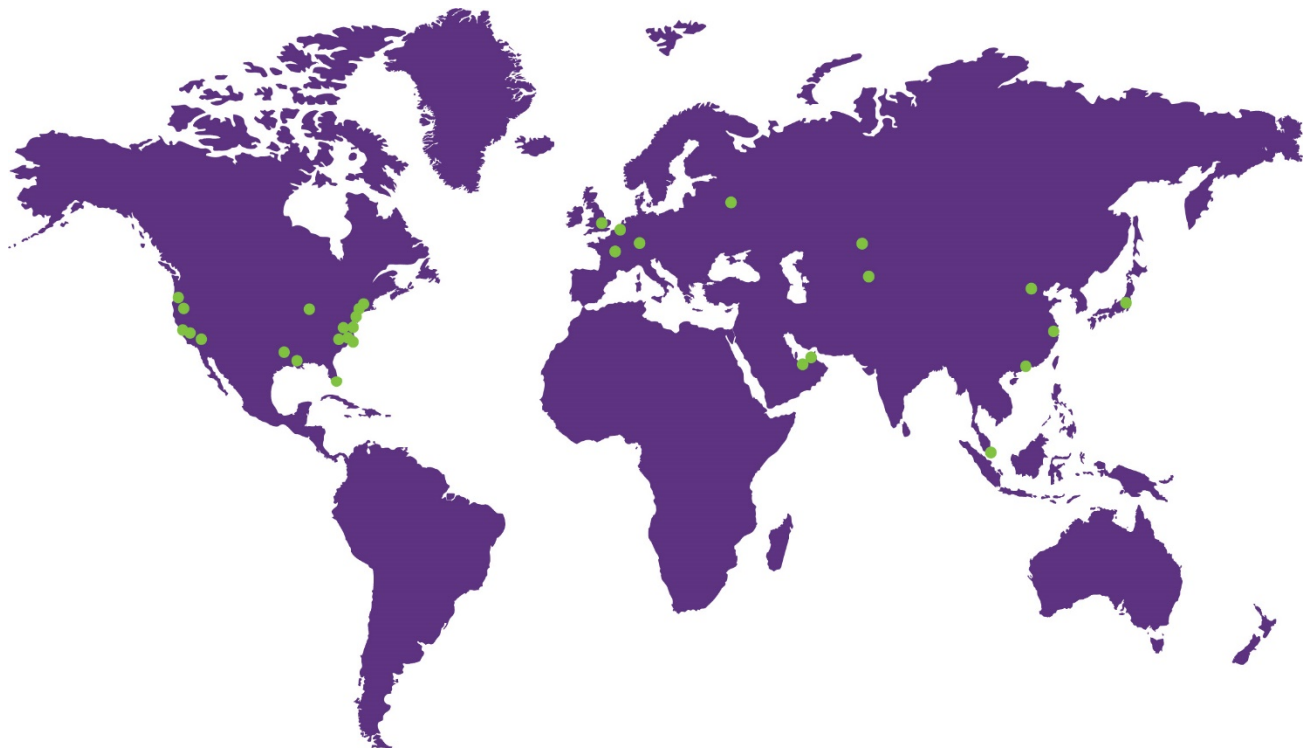
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Asia Pacific
Europe
Latin America
Middle East
North America

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