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

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Overview of State Directives

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Statewide Developments

- The state released an updated version of its Employer Playbook on 9/25.
 - As a reminder, the Employer Playbook contains guidance to help employers prepare for reopening their businesses and to support a safe, clean working environment.
 - Employers are not required to post the Playbook in their workplace, but they should review the document and familiarize themselves with the guidance it contains.
- Here is a summary of the most significant updates to the Playbook:
 - The Playbook now explicitly states that employers must report COVID-19 outbreaks to the Local Health Department (LHD) in the jurisdiction in which the infected worker resides **and** the LHD in the jurisdiction where the employer is located.
 - The language in the previous version of the Playbook only required employers to report to the LHD in the jurisdiction where the infected worker resides.

Statewide Developments

- The reporting threshold is still “three or more laboratory-confirmed cases of COVID-19 among workers who live in different households within a two-week period.”
- The new Playbook contains updated language to align the section on “minimum criteria for return to work” with CDC guidance. It also includes a new table for employers who are considering whether to temporarily suspend operations due to a COVID-19 infection.
- In addition, the Playbook features new introductory paragraphs in the Face Mask Guidance. The new paragraphs remind employers that all workers must use face coverings, or must use equivalent protection when they cannot use a face covering.
 - The updated guidance also reminds employers that they can require members of the public to wear face coverings in their establishments, and that, at a minimum, they should “strongly encourage” the public to wear face coverings.
 - The guidance also recommends that employers make “disposable courtesy face coverings” available.
- The new Playbook also includes language discussing the state’s Blueprint for Reopening.

Recent County Movement Among the State's 4 Tiers

- California's Blueprint for a Safer Economy includes four color-coded tiers. The tiers are Purple, Red, Orange, and Yellow, in order of the degree of restrictions on businesses and activities.
- Every county is assigned to a tier based on its test positivity and adjusted case rate. At a minimum, counties must remain in a tier for at least 3 weeks before they can move forward.
- Several counties have advanced to less restrictive tiers in recent weeks. However, a County is not required to reopen businesses or activities when its tier assignment changes. The Blueprint permits Local Health Officers to proceed more cautiously.
 - For example, on 9/22, the state moved Alameda County from Purple to Red. Under state guidance, Alameda County can reopen several activities and businesses, including indoor operations at fitness centers, up to 10% capacity. The county can also allow personal care services to operate indoors with modifications, and can expand indoor retail from 25% to 50% capacity.
 - However, Alameda County has chosen to reopen at a slower pace. The county will not allow fitness centers or personal care services to resume indoor operations until 10/9. In addition, the county has chosen not to allow indoor retail to expand to 50% capacity until further notice.

Recent County Movement Among the Four Tiers

- The state announced another round of county moves on 9/29, and again yesterday.
 - On 9/29, Butte, Contra Costa, Fresno, Sacramento, San Joaquin, Santa Barbara, and Yolo Counties all moved from Purple to Red. Amador, Calaveras, San Francisco, and Sierra Counties moved from Red to Orange.
 - Yesterday, Merced, Ventura, and Yuba Counties moved from Purple to Red. However, not all counties moved forward. Tehama County moved back to Purple, and Shasta County moved back to Red.
- The California Department of Public Health's website contains the most up to date information on each county's tier and progress toward reopening.
- However, county websites are the best sources of information on whether a particular county has chosen to reopen to the greatest extent allowed by its tier.

Operating an Office in the Orange and Yellow Tiers

- Once a county reaches the Orange tier, the county can reopen indoor operations at offices for nonessential businesses. However, the state still “encourages” remote working in both of these tiers.
- The state also still requires businesses in office workspaces to operate under the modifications outlined in the state’s Guidance for Office Workspaces and the corresponding Checklist for Office Workspaces.
- Per the state’s Guidance, businesses operating in office workspaces must:
 - Establish a written Worksite Specific Plan (Plan) at every office location.
 - Provide workers with face coverings or reimburse workers for the reasonable cost of obtaining them. In addition, businesses should train workers on the CA Department of Public Health Guidance for the Use of Face Coverings, as well as any related policies, work rules, and practices the employer has adopted.
 - Implement “Individual Control Measures and Screenings,” including providing temperature and/or symptom screenings for all workers at the beginning of their shifts and any vendors, contractors, or others entering the establishment.
 - Perform thorough cleaning on high-traffic areas, frequently disinfect commonly used surfaces, and provide time for workers to implement cleaning practices during their shifts.
 - Abide by the state’s “Physical Distancing Guidelines,” which include implementing measures to ensure physical distancing of at least 6 feet between workers and customers, and closing or restricting common areas.

Operating an Office in the Orange and Yellow Tiers

- Counties are free to implement measures that are more restrictive than those implemented by the state. San Francisco County, which is currently in the Orange tier, has chosen to do this.
- On 9/30, San Francisco updated its Health Order to allow office spaces for nonessential businesses to operate, if the offices are located within the facilities of additional businesses that are allowed to operate. However, the only individuals who are allowed to work in person in these office spaces are individuals who are “necessary for allowed operations” and who cannot work remotely.
- Personnel who can work remotely are required to continue to do so.
- The Order also places operating conditions on offices that allow “necessary personnel” who cannot work remotely to work in the office. In particular, the office must adjust the maximum occupancy rules based on the size of the facility to limit the number of people as follows:
 - Office Facilities with fewer than 20 personnel must reduce their maximum occupancy to the number of people who can maintain at least six feet of physical distance from each other in the facility at all times;
 - Office Facilities with 20 or more personnel must reduce their maximum occupancy to the lesser of 20% of the facility’s normal maximum occupancy, or the number of people who can maintain at least six feet of physical distance from each other in the facility at all times.
- The office must have also created, posted, and implemented San Francisco’s Social Distancing Protocol checklist (attached to the Order as Appendix A).
- In addition, all personnel working in the office must wear face coverings and maintain at least six feet of physical distance at all times. The Order also prohibits “inherently risky activities,” such as singing, shouting, eating, and drinking.

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AB 685: Important New Notice Requirements

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AB 685 Imposes New Notice Requirements

- California Governor Gavin Newsom signed Assembly Bill 685 on September 17, 2020. The law does not take effect until January 1, 2021.
- If an employer receives notice of a worker's potential exposure to COVID-19, within one business day, the employer must provide a written notice to all employees, their union representatives, and the employers of subcontracted employees, who were on the premises at the same **worksite** as the **qualifying individual** within the **infectious period** that they may have been exposed to COVID-19.
 - How is "qualifying individual" defined?
 - How is "worksite" defined?
 - How is "infectious period" defined?

Content, Manner and Retention of Required Notice

- Within one business day of receiving notice of potential exposure.
- Notice may be delivered by personal service, email, or text message.
- Must be in both English and the language understood by the majority of the employees.
- Retention: Notice records must be retained for minimum of three years.

Notice to employees at worksite w/in "infectious period"	Notice to employers of subcontracted employees at worksite w/in "infectious period"	Notice to exclusive representative of employees at worksite w/in "infectious period"
Must include: <ul style="list-style-type: none">• COVID-19 benefits info (federal, state, and local)• Disinfection and safety plan	Must include: <ul style="list-style-type: none">• Disinfection and safety plan	Must include: <ul style="list-style-type: none">• COVID-19 benefits info (federal, state, and local)• Disinfection and safety plan• Incident report form (resembling OSHA 300 form)

“Outbreak” Notice to Local Public Health Agency

- If an employer is notified of the number of cases that meet the definition of a COVID-19 “outbreak,” within 48 hours that employer shall notify the local public health agency in the jurisdiction of the worksite of the following:
 - Number of cases;
 - Names;
 - Occupations;
 - Worksite address; and
 - Worksite NAICS code.

- How is “outbreak” currently defined?

To Whom Does the Law Apply?

- Applies to all public and private employers in California.
- The notice requirements do not apply to employees who, as part of their duties, conduct COVID-19 testing or screening or provide direct patient care or treatment to individuals who are known to have tested positive for COVID-19, are persons under investigation, or are in quarantine or isolation related to COVID-19, unless the qualifying individual is an employee at the same worksite.
- The section on outbreak notice to local public health agencies does not apply to a “health facility,” as defined in Section 1250 of the Health and Safety Code.

Noteworthy Additional Provisions

- Increases Cal-OSHA's enforcement powers
 - Grants Cal-OSHA the right to prohibit anyone to enter a part of the workplace if it determines that the immediate area of the workplace presents an imminent hazard to employees due to COVID-19.
 - Fast tracks Cal-OSHA's ability to issue a "serious violation" related to COVID-19.
- Reinforces existing worker protections
 - An employer shall not require employees to disclose medical information unless otherwise required by law.
 - An employer shall not retaliate against a worker for disclosing a positive COVID-19 test or diagnosis or order to quarantine or isolate. Workers who believe they have been retaliated against in violation of this section may file a complaint with the DLSE.

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Revised California Family Rights Act

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SB 1383 Expands CFRA and Diverges from the FMLA

- Effective January 1, 2021
- Expands CFRA coverage to employers with 5 or more employees
 - Repeals New Parent Leave Act
- Expands definition of “family member”
 - Old definition: Minor child, adult dependent child, spouse, domestic partner, or parent.
 - New definition now includes: Employee’s adult non-dependent child, sibling, grandparent, and grandchild.
- 12 weeks of baby-bonding leave for each parent coworker.
- Deletes “key employee” exception to job reinstatement requirement.
- 12 weeks of leave for qualifying exigency related to employee’s spouse, domestic partner, child, or parent’s active duty in the US military.

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COVID-19 Workers' Compensation Presumption and Reporting Requirements

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SB 1159 Codifies Workers' Compensation Presumption

- Effective September 17, 2020
- If an employee of an employer with 5 or more employees tests positive for or is diagnosed with COVID-19 during an “outbreak” between July 6, 2020 and January 1, 2023, there is a disputable presumption that the injury arose out of the course of employment and is compensable.
- Employers may dispute the presumption with certain evidence:
 - Measures to reduce potential transmission
 - Employee’s nonoccupational risks of COVID-19 infection
 - Statements made by the employee
 - Any other evidence normally used to dispute a work-related injury

SB 1159 Codifies Workers' Compensation Presumption

- An “outbreak” exists if within 14 days one of the following occurs at a “specific place of employment”:
 - Employers with 100 or fewer employees at specific place of employment: 4 employees test positive for COVID-19
 - Employers with more than 100 employees at specific place of employment: 4% of employees who reported to the specific place of employment test positive for COVID-19
 - A specific place of employment is ordered to close by a local public health department, CA DPH, Cal-OSHA, or a school superintendent
- The presumption applies to the following employees even if the employee did not test positive during an “outbreak”
 - Certain essential workers
 - Healthcare providers, police officers, firefighters, custodial employees in contact with COVID-19 patients, in-home support service providers
 - The date of injury was between March 19, 2020 and July 5, 2020

SB 1159 Reporting Requirements

- Employer must report to its claims administrator:
 - Within 3 business days:
 - When the employer knows or reasonably should know that an employee has tested positive for COVID-19.
 - Within 30 business days of September 17, 2020:
 - When the employer knows of an employee who tested positive between July 6, 2020 and September 16, 2020.
- Claims administrator will use this information to determine whether an outbreak has occurred.

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.

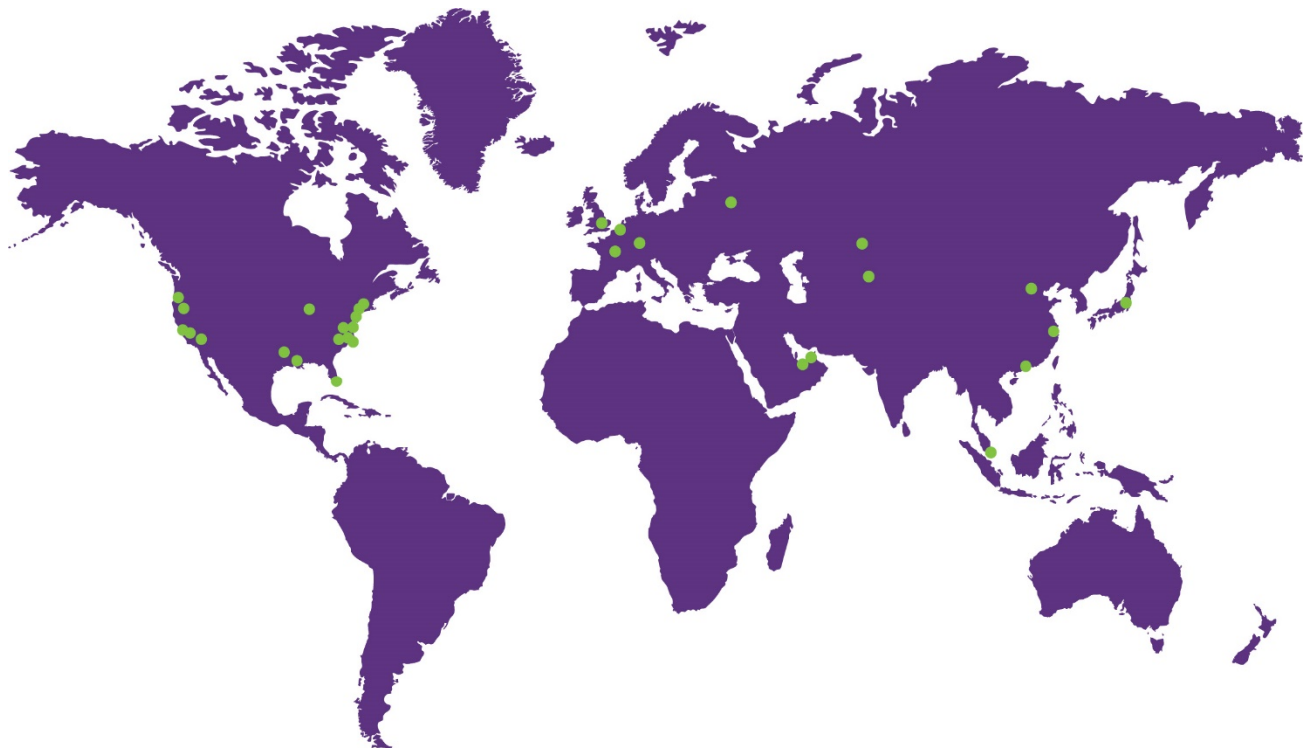
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