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NAVIGATING THE NEXT.

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

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Cal-OSHA Emergency Temporary Standards

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Cal-OSHA Emergency Temporary Standards (ETS) – What's New?

- Employers must conduct a workplace-specific identification of all interactions, areas, activities, processes, equipment, and materials that could potentially expose employees to COVID-19 hazards.
- Training is required on various subjects related to COVID-19 prevention.
- Employers must develop a written COVID-19 prevention plan.
- Employees are required to maintain six feet of separation except where an employer can demonstrate that six feet of separation is not possible, and except for momentary exposure while persons are in motion.
- Employers shall provide face coverings and ensure that employees wear them over their noses and mouths when indoors, when outdoors, and when less than six feet away from another person, and when required by other laws.

Cal-OSHA ETS – What's New?

- Employees cannot share equipment or PPE to the extent feasible. When it is not feasible to prevent sharing, sharing must be minimized and such items and equipment must be disinfected between uses by different people.
- Mechanical ventilation systems must maximize the quantity of outside air provided to the extent feasible.
- Employees exposed to COVID-19 *must be offered COVID-19 testing at no charge* during working hours.
- Employers must provide notice to workers regarding possible COVID-19 exposure (i.e., “close contacts”) within one business day.
- There are extensive requirements for employer-provided transportation and housing.

Cal-OSHA ETS – Outbreak Requirements

- There are detailed procedures required for responding to outbreaks. Cal-OSHA now recognizes 2 types of outbreaks: an “outbreak” and a “major outbreak.”
 - An “outbreak” occurs when there are three or more COVID-19 cases in an exposed workplace within a 14-day period.
 - A “major outbreak” occurs when there are 20 or more COVID-19 cases in an exposed workplace within a 30-day period.
- During an outbreak, the employer must provide testing to all employees at the worksite once a week; for a major outbreak, twice a week.
- Each outbreak triggers additional steps, including contact tracing, investigations, surveillance testing, and possible remedial actions.
- These requirements apply until there have been no new cases at the workplace for a 14-day period.

Cal-OSHA ETS – Paid Sick Leave

“For employees excluded from work [due to being a “COVID-19 case” or “exposure to COVID-19”] and otherwise able and available to work, **employers shall continue and maintain an employee’s earnings, seniority, and all other employee rights and benefits, including the employee’s right to their former job status**, as if the employee had not been removed from their job. Employers may use employer-provided employee sick leave benefits for this purpose and consider benefit payments from public sources in determining how to maintain earnings, rights and benefits, where permitted by law and when not covered by workers’ compensation.” 8 CCR 3205(c)(10)(C).

- This does not apply where the employer demonstrates that the COVID-19 exposure is not work-related.
- At the time of exclusion, an employer must provide the employee with information about his or her rights under Section (c)(10)(C) (above) and information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state, or local laws.

Cal-OSHA ETS FAQs

- Do the ETS provide for a specific kind of test to be used?
- Does mandatory testing during an outbreak have to be conducted on-site?
- Does testing have to be during an employee's regular working hours?
- What if an employee refuses to be tested during mandatory outbreak testing?
- If an employee refuses testing during an outbreak or major outbreak, can the employer exclude the employee and NOT pay the employee (i.e., make pay contingent on getting a test)?

Cal-OSHA ETS FAQs

- Can an employer require that an exposed employee get a test?
- Can the employer require that employees notify it of a positive test?
- Can an employer discipline or terminate employees who know they are positive but fail to tell the employer?

Cal-OSHA ETS FAQs

- If an employee is receiving workers' compensation/temporary disability benefits due to workplace exposure, do employers have to make up any difference if the benefits do not make the employee whole?
- If an employer implements separate, non-overlapping shifts, does that mean that each shift has its own workplace (even if the other shifts use the same physical space)?
- How do you count cases for outbreak testing?
- What is the status of legal challenges?

State-Level Update

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 illuminated buildings and streets. Overlaid on the city and extending upwards is a network of glowing lines and nodes, resembling a digital or communication network. The nodes are small, bright spheres in various colors (orange, blue, white), and the lines are thin, glowing lines connecting them. The overall aesthetic is futuristic and technological.

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Regional Stay-at-Home Order

- Regional Stay-at-Home Order applies for at least three weeks when ICU capacity drops below 15% in a designated region.
 - assessed on a weekly basis
- The five designated regions and the counties in each region are as follows:
 - **Northern California:** Del Norte, Glenn, Humboldt, Lake, Lassen, Mendocino, Modoc, Shasta, Siskiyou, Tehama, and Trinity
 - **Bay Area:** Alameda, Contra Costa, Marin, Monterey, Napa, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, and Sonoma
 - **Greater Sacramento:** Alpine, Amador, Butte, Colusa, El Dorado, Nevada, Placer, Plumas, Sacramento, Sierra, Sutter, Yolo, and Yuba
 - **San Joaquin Valley:** Calaveras, Fresno, Kern, Kings, Madera, Mariposa, Merced, San Benito, San Joaquin, Stanislaus, Tulare, and Tuolumne
 - **Southern California:** Imperial, Inyo, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura

Regional Stay-at-Home Order

- On January 12, Greater Sacramento exited the Stay-at-Home Order



STATEWIDE METRICS

91.7 New COVID-19 positive cases per day per 100K

17.6% Positivity rate (7-day average)

0.0% ICU availability

 Click on the map for updated metrics

REGIONAL STAY HOME ORDERS

	Regions	Counties	Population	
 Yes	3	34	36,473,198	 90.9%
 No	2	24	3,655,962	 9.1%

California's Tier System

- Updates and lists of permissible activities for each tier are available at covid19.ca.gov.
- Can search by county or by activity.

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

Travel Advisories and Orders

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 global communication or data network. The lines are primarily blue and white, with some nodes glowing in orange and red. The overall composition suggests a global, interconnected theme, likely related to the title 'Travel Advisories and Orders'.

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California Travel Advisory

- Californians are encouraged to stay home or in their region and avoid non-essential travel of more than 120 miles from one's home, or to other states or countries.
 - Just an advisory, not an order
- Persons arriving in California, including returning residents, should practice self-quarantine for 10 days after arrival.
- Interactions should be limited to immediate household.
- Exceptions: Advisory does not apply to "essential" travel such as work and study, critical infrastructure support, economic services and supply chains, health, immediate medical care, and safety and security.

Local Travel Orders

- Mandatory 10-day quarantine required for anyone traveling into:
 - San Francisco from outside the Bay Area
 - Santa Clara County from more than 150 miles from the county's borders
 - Los Angeles County from outside the Southern California region
- Exceptions to these orders include:
 - travel for healthcare professionals' duties
 - travel for essential governmental functions
 - travel for performing essential infrastructure work

Hero Pay

The image is a composite background. At the top, a bright sun or star is on the horizon, casting a glow over a dark, starry space. Below this, a cityscape is visible at night, with lights from buildings and streets. A network of glowing lines, in shades of blue and orange, is overlaid on the city, connecting various points. The lines form a complex web, suggesting a global network or data flow.

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Proposed Hero Pay Ordinances

- **Los Angeles County:**

- Considering enacting an urgency ordinance requiring certain employers of grocery and drug retail workers to pay all workers an additional \$5 per hour in “hero pay”
- As currently contemplated, this would apply to:
 - Stores in unincorporated areas and covered by Appendix B-1 of L.A. County Public Health Order (“Grocery Stores and Retail Food Markets”); *and*
 - Companies that own/run the stores are publicly traded *or* have at least 300 employees nationwide and more than 10 employees per store site
- The ordinance would remain in place for 120 days
- Urgency ordinance to be drafted prior to Board of Supervisors’ January 26 meeting
- NOTE: The county is exploring whether the rule could apply to ***incorporated*** areas in addition to unincorporated areas

Proposed Hero Pay Ordinances

- **City of Los Angeles:**

- Considering enacting a similar urgency ordinance requiring certain employers of grocery and drug retail workers to pay all workers an additional **\$5 per hour** in “hero pay”

- **City of Long Beach:**

- Considering enacting an urgency ordinance requiring an additional **\$4 per hour** in “hero pay” to front-line grocery workers

Paid Sick Leave

The background is a composite image. At the top, a starry space scene with a bright light source. Below it, a globe of the Earth is shown, with a cityscape visible on the surface. A network of glowing lines and nodes is overlaid on the globe and cityscape, suggesting a global network or data flow.

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Status Updates on COVID-19 Paid Sick Leave

- **Federal Families First Coronavirus Response Act (FFCRA):**
 - FFCRA leave is no longer mandatory
 - Tax credit for FFCRA leave is available through March 31, 2021 (so employers who choose to continue to provide FFCRA leave can still recoup the tax credit)
 - Amount of total leave (and tax credit) available remains the same, allowing employers to “roll over” any unused FFCRA leave amounts (and tax credits)
 - DOL will continue to enforce FFCRA for leave taken or requested from April 1, 2020 to December 31, 2020
- **California’s Supplemental Paid Sick Leave (created by AB1867) expired on December 31, 2020:**
 - COVID-19 Supplemental Paid Sick Leave (Cal. Lab. Code § 248.1) and COVID-19 Food Sector Supplemental Paid Sick Leave (Cal. Lab. Code § 248) expired when mandatory portions of FFCRA expired (December 31, 2020)
 - **BUT** any workers who were taking California COVID-19 supplemental paid sick leave as of December 31, 2020 must be allowed to continue taking leave, even if the entitlement extends into 2021
 - Example: an employee who showed symptoms of COVID-19 and for whom it was recommended to isolate on December 30, 2020 must be allowed to continue utilizing supplemental paid sick leave, even if the isolation continues past December 31, 2020
 - The Labor Commissioner’s office will continue to enforce any violations that occurred during the effective dates

Local COVID-19 Paid Sick Leave Requirements That Remain in Effect

- **NOTE: This is just a sampling of current ordinances. Please consult counsel to confirm which local paid sick leave laws might mandate COVID-19-related paid sick leave for your employees.**
- **A number of local laws requiring COVID-19 supplemental paid sick leave remain in effect, including:**
 - City of Los Angeles: Mayor Garcetti’s Public Order on Supplemental Paid Sick Leave Due to COVID-19 will remain in effect until 2 calendar weeks after the COVID-19 local emergency period expires.
 - City of Long Beach’s COVID-19 Ordinance remains in effect. There is no set expiration date; the City Council revisits the ordinance’s necessity every 90 days.
 - San Francisco’s Public Health Emergency Leave Ordinance has been extended through at least February 10, 2021 (has been extended regularly since enactment)
- **A number of cities have indefinitely expanded their “regular” paid sick leave laws to allow use for COVID-19-related reasons, including:**
 - City of Los Angeles
 - San Diego
 - Emeryville

Notable New and Pending COVID-19 Paid Sick Leave Extensions

- **San Jose expanded its paid sick leave ordinance to “fill the gap” left by the FFCRA’s expiration:**
 - Covers all businesses lawfully able to conduct business under all applicable Health Orders that maintain a facility within the City of San Jose or have employees performing at least 2 hours of work per week within the City’s geographical boundaries
 - Expires June 30, 2021, but no additional hours are granted by the extension (80 total hours over duration of ordinance; sick leave bank does not “reset” in 2021)
 - Other local governments may also try to “fill the gap” left by FFCRA’s expiration
- **Pending Ordinances/Extensions:**
 - Oakland is considering an emergency ordinance extending and amending its prior COVID-19 supplemental paid sick leave (SPSL) ordinance, which expired on December 31, 2020. The contemplated extension would be retroactive, and would tie the sunset date of the SPSL ordinance to Oakland’s local emergency period

Upcoming Events

- **Thursday, January 21 - *COVID-19 Vaccines: Legal Considerations In Light Of Latest Developments* [Register here](#)**
- **Wednesday, February 3 – *2020 Recap: California Employment Law Year In Review* [Register Here](#)**


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?](#)



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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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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.

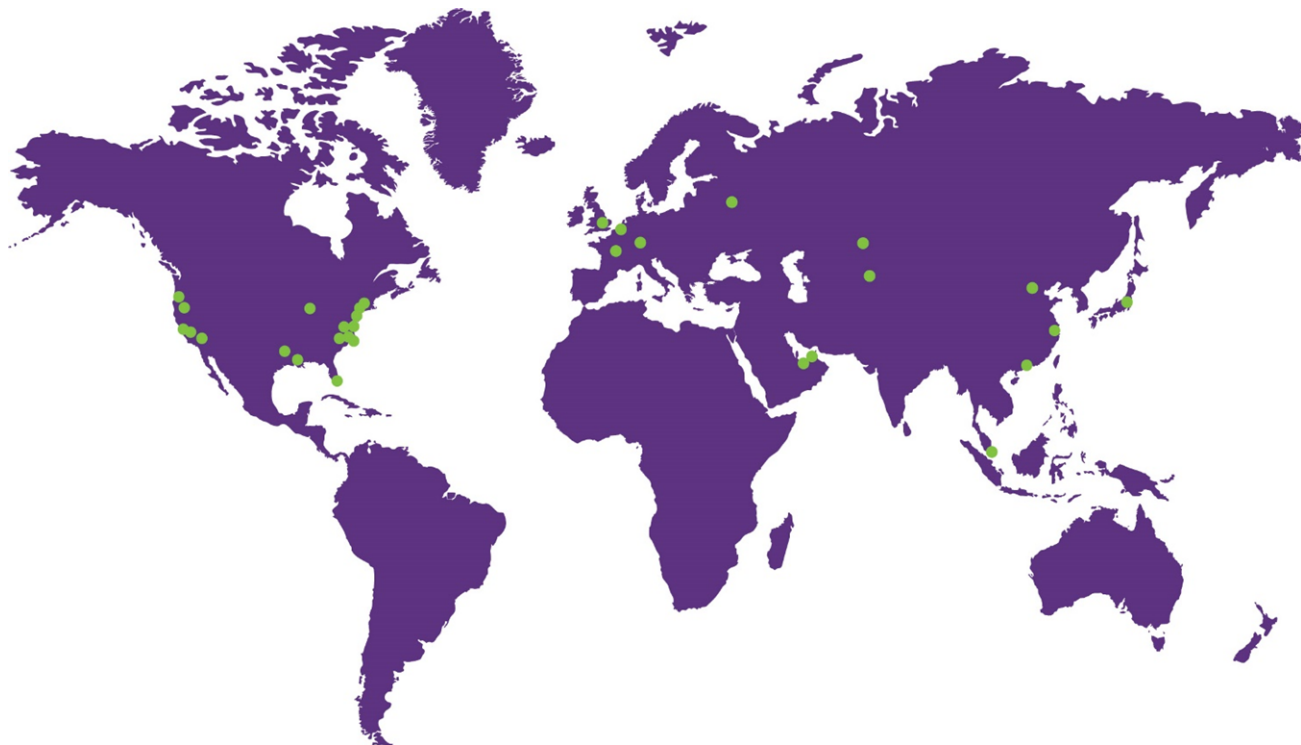


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