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# NAVIGATING THE NEXT.

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

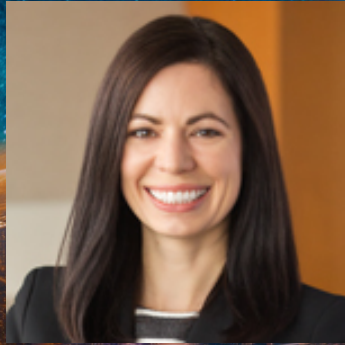
Kate McGuigan, Nicole Beckley, and Claire Lesikar  
February 24, 2021



# Presenters



**Kate McGuigan**



**Nicole Beckley**



**Claire Lesikar**

**Morgan Lewis**

# Statewide Updates

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# Statewide Updates

- **Current Tier Assignments:**

- **Red (Substantial)** – Del Norte, Humboldt, Trinity, Shasta, Yolo, Plumas, Marin, San Mateo, and Mariposa Counties

- **Orange (Moderate)** – Sierra and Alpine Counties

- **Purple (Widespread)** – Everywhere Else



## STATEWIDE METRICS

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

4.8% Positivity rate (7-day average)

20.9% ICU availability

Find a county

Highlight County

Click on the map for updated metrics

## COUNTY RISK LEVELS

Risk Level	Counties	Population	Positivity Rate
Widespread (Purple)	47	38,472,788	95.9%
Substantial (Red)	9	1,652,140	4.1%
Moderate (Orange)	2	4,232	0.0%



# Easing of Restrictions

As of February 23, 2021:

- San Francisco County:
  - Adjusted Case Rate: 5.2
  - Positivity Rate: 1.9%
  - Health Equity Quartile: 4.2%
- Los Angeles County:
  - Adjusted Case Rate: 12.3
  - Positivity Rate: 5.1%
  - Health Equity Quartile: 7.5%
- Santa Clara County:
  - Adjusted Case Rate: 6.7
  - Positivity Rate: 2.4%
  - Health Equity Quartile: 5.5%

County risk level	Adjusted case rate* 7-day average of daily COVID-19 cases per 100K with 7-day lag, adjusted for number of tests performed	Positivity rate** 7-day average of all COVID-19 tests performed that are positive	
		Entire county	Health equity quartile
<b>WIDESPREAD</b>  Many non-essential indoor business operations are closed	<b>More than 7.0</b> Daily new cases (per 100k)	<b>More than 8.0%</b> Positive tests	
<b>SUBSTANTIAL</b>  Some non-essential indoor business operations are closed	<b>4.0 – 7.0</b> Daily new cases (per 100k)	<b>5.0 – 8.0%</b> Positive tests	<b>5.3 – 8.0%</b> Positive tests
<b>MODERATE</b>  Some indoor business operations are open with modifications	<b>1.0 – 3.9</b> Daily new cases (per 100k)	<b>2.0 – 4.9%</b> Positive tests	<b>2.2 – 5.2%</b> Positive tests
<b>MINIMAL</b>  Most indoor business operations are open with modifications	<b>Less than 1.0</b> Daily new cases (per 100k)	<b>Less than 2.0%</b> Positive tests	<b>Less than 2.2%</b> Positive tests

# Easing of Restrictions

- Expectation is that more counties will be entering the Red (Substantial) Tier soon: San Francisco and Santa Clara each had their first of two consecutive weeks meeting red tier metrics
- Red Tier:
  - More public-facing businesses can open with modifications, capacity limitations
  - Retail operations can increase to 50% capacity
  - Restaurants can open indoor dining, maximum 25% capacity or 100 people (whichever is fewer)
  - Gyms and fitness studios can open indoor operations, maximum 10% capacity
  - Refer to: <https://covid19.ca.gov/safer-economy/> for more information



# Easing of Restrictions – Local Orders

- **Los Angeles City:**

- February 16, 2021 Safer L.A. Order: City of Los Angeles to progressively permit more activities with certain modifications but must still minimize contact with others as much as possible
- Aligns with state and county orders

- **Los Angeles County:**

- January 25, 2021: aligned its Health Officer Order with state guidance
- Reopening of businesses will follow the statewide Blueprint for a Safer Economy

- **Santa Clara County:**

- February 12, 2021 Mandatory Directive on Capacity Limitations: Most businesses that are allowed to open indoor operations to the public must limit capacity of their publicly accessible space to 20% (25% allowed under Red Tier)

- **San Francisco:**

- January 25, 2021 Health Order is aligned with statewide Blueprint for a Safer Economy

# School Openings

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# SB 86: “Safe and Open Schools” Plan

- Requires by April 15:
  - All schools to offer optional in-person instruction to vulnerable groups of students in K-12, including students with disabilities, homeless students, English language learners, etc.
  - Schools in counties with fewer than 7 new COVID-19 cases daily per 100,000 residents (Red Tier or better) to offer in-person instruction to all students in grades K-6
  - Schools that reopen must allow families to choose distance learning if they want
  - Requires county public health departments to provide COVID-19 vaccines to onsite teachers and staff.
- Reaction to Plan
  - Certain school districts criticized the bill for slowing down school reopenings.
  - Six of the state’s largest school districts support the plan.
  - Governor has not commented on the bill since he issued a short statement last week criticizing it for moving too slowly.
- Bill remains in limbo with no vote currently scheduled.

# Vaccine Updates

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# Current California Vaccine Rollout Progress

- As of February 22, 7.58 million vaccine doses have been administered in California
  - Vaccinated Californians by age:
    - 65+: 54.7%
    - 50-64: 16.6%
    - 18-49: 28.7%
    - 0-17: 0%

# Current California Vaccine Rollout Progress

- Vaccines may now be administered to the following groups:
  - Individuals age 65+
  - Individuals working in the following sectors: agriculture, food, education, childcare, emergency services
  - Healthcare workers and long-term-care residents
- As of March 15: Healthcare providers may use their clinical judgement to vaccinate individuals age 16-64 who meet one of the following conditions:
  - Are deemed to be at the very highest risk to get very sick from COVID-19 due to a severe health condition
  - Due to an individual's developmental or other severe high-risk disability:
    - The individual is likely to develop a severe, life-threatening illness or death from COVID-19 infection
    - Acquiring COVID-19 will limit the individual's ability to receive ongoing care or services vital to their well-being and survival
    - Providing adequate and timely care will be particularly challenging as a result of the individual's disability



# EEOC Withdrew Proposed Guidance on Vaccine Incentives

- On February 12, the EEOC withdrew two proposed rules regarding incentives that employers can provide employees as part of a wellness program.
  - The proposed rules stated that employers could only offer *de minimis* incentives for employees participating in wellness programs.
- Without these rules, there is little guidance from the EEOC on how much incentive employers may offer their employees to receive vaccines.

# **New California Pandemic Relief**

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# February 24: Governor signed package with \$7.6 billion in direct relief

- Direct relief to individuals and families:
  - \$600 in one-time relief to low-income households
  - Additional \$600 one-time payments to certain low-income undocumented workers.
- \$2.1 billion of relief for small businesses:
  - Grants of up to \$25,000 for small businesses impacted by the pandemic.
- Licensing fee waivers: 2 years of fee relief for approximately 59,000 restaurants and bars and 600,000 barbering and cosmetology individuals and businesses
- \$400 million in child care stipends:
  - \$525 per enrolled child for state-subsidized child care and preschool providers.
- Additional aid to low-income individuals and families, agricultural workers, low-income community college students, and state college students eligible for CalFresh.

**Pending California  
COVID-19  
Supplemental Paid  
Sick Leave  
Amendments – AB 84  
and SB 95**

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# Proposed California COVID-19 Supplemental Paid Sick Leave Amendments

- February 22, 2021 California plans to amend AB 84 and SB 95 to reinstate California's COVID-19 Supplemental Paid Sick Leave with certain modifications
- Section 248, which concerns Food Sector employees, is amended to include additional reasons for use, including persons who are unable to work or telework because:
  - (A) The food sector worker is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
  - (B) The food sector worker is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19.
  - (C) The food sector worker is prohibited from working by the food sector worker's hiring entity due to health concerns related to the potential transmission of COVID-19.
  - (D) The food sector worker is attending an appointment to receive a vaccine for protection against contracting COVID-19.
  - (E) The food sector worker is experiencing symptoms related to a COVID-19 vaccine that prevents the worker from being able to work.
  - (F) The food sector worker is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
  - (G) The food sector worker is caring for an individual who is subject to an order described in subparagraph (A), has been advised to self-quarantine or self-isolate as described in subparagraph (B), or is experiencing symptoms of COVID-19 and seeking a medical diagnosis as described in subparagraph (E).
  - (H) The food sector worker is caring for an individual whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19

# Proposed California COVID-19 Supplemental Paid Sick Leave Amendments

- Section 248 expands the definition of a covered worker for COVID-19 PSL to any employee at any public or private entity and to transportation network company drivers (500 employee threshold removed)
- The same additional reasons for use as under Section 248 are also included:
  - (D) The covered worker is attending an appointment to receive a vaccine for protection against contracting COVID-19.
  - (E) The covered worker is experiencing symptoms related to a COVID-19 vaccine that prevents the worker from being able to work.
  - (F) The covered worker is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
  - (G) The covered worker is caring for an individual who is subject to an order described in subparagraph (A), has been advised to self-quarantine or self-isolate as described in subparagraph (B), or is experiencing symptoms of COVID-19 and seeking a medical diagnosis as described in subparagraph (E).
  - (H) The covered worker is caring for an individual whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19.
- Under each section, full-time covered workers or Food Sector employees are entitled to up to 80 hours of COVID-19 PSL per calendar year
- Both sections are retroactive to January 1, 2021 and expire on September 30, 2021, or upon the expiration of any federal extension of the FFCRA's Emergency Paid Sick Leave Act
- As budget trailer bills, they will take effect immediately upon being passed. **Currently in Committee but may be heard by end of this week or next week.**

# **Status Updates on Local COVID-19 Paid Sick Leave Ordinances**

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# Status Updates on Local COVID-19 Paid Sick Leave

- **Emeryville**

- COVID-19–related reasons for use were incorporated into the existing paid sick leave (PSL) ordinance.

- **Los Angeles City**

- February 10, 2021 Amended order now provides COVID-19 PSL to employees employed with the same employer for 60 days if they perform any work within the city.
- Employer defined as having 500 or more employees within the City or 2,000 or more employees within the United States.
- Amount of COVID-19 PSL is calculated based on an employee’s two-week average over the last 60 days of employment.
- Includes exemptions, such as **Generous Leave Exemption** – if an employer has a paid leave or paid time off policy that provides a minimum of 160 hours of paid leave annually to an employee.
- Effective February 10, 2021; remains in effect until two calendar weeks after the local emergency expires.

- **Los Angeles County**

- Amended ordinance is retroactive to January 1, 2021; will remain in effect until two weeks after the county’s COVID-19 local emergency ends.
- Applies to all employers in the unincorporated areas of the county and to all employees who perform any work within the unincorporated parts of the county.
- One-time benefit. Each full-time employee is entitled to 80 hours of SPSL for the entire period covered under the ordinance. Part-time employees receive SPSL equal to the employees’ average two week pay between January 1, 2020 and the ordinance effective date.

# Status Updates on Local COVID-19 Paid Sick Leave

- **Long Beach**

- City Council will determine the sunset date of the COVID-19 PSL ordinance every 90 days; the next 90-day evaluation deadline is March 6, 2021

- **Oakland**

- Extended PSL to remain in effect until the city's COVID-19 emergency expires; applies retroactively to December 31, 2020
- One-time benefit and ran concurrently with FFCRA and California COVID-19 Supplemental Paid Sick Leave law

- **Sacramento City**

- Extended the Worker Protection, Health and Safety Act of 2020 through March 31, 2021

- **Sacramento County**

- Extended the County Worker Protection, Health and Safety Act of 2020 through March 31, 2021
- Extension went into effect on January 14, 2021



# Status Updates on Local COVID-19 Paid Sick Leave

- **San Francisco**

- Extended by another 60 days from February 12 to April 13, 2021
- New version exempts 501(c)(3) nonprofits if the majority of their annual revenue is program service revenue that is not unrelated business taxable income under federal tax law and they do not engage in healthcare operations as defined
- New version will limit employees' use of COVID-19 PSL to only if they miss work for a covered reason

- **San Jose**

- New standalone emergency ordinance set to expire June 30, 2021
- Provides same coverage as previously received under the federal, state and local ordinance together
- Also has a “regular” non-urgency ordinance in case the urgency ordinance is challenged

- **San Mateo County**

- Extended through June 30, 2021

# Status Updates on Local COVID-19 Paid Sick Leave

- **San Diego City**

- COVID-19-related reasons for use were incorporated into the existing PSL ordinance.

- **Santa Rosa**

- February 2, 2021: new urgency ordinance passed reinstating PSL for employees within City limits
- Mirrors provisions of FFCRA but is applicable to all businesses within City limits
- Effective February 2 – March 31, 2021

- **Sonoma County**

- February 2, 2021: reinstated its prior emergency PSL ordinance through June 30, 2021
- February 9, 2021 enacted an urgency ordinance expanding coverage under its emergency PSL ordinance to fill in the gaps left by FFCRA
- Applies to all employers in unincorporated areas (no minimum employee threshold)
- One-time benefit

# Hero Pay Ordinances

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# Hero Pay Ordinances

- A number of California cities are adopting “Hero Pay” ordinances requiring certain grocery store or retail drug companies to pay additional hazard pay on top of employees’ regular wages
- Localities with Hero/Hazard Pay Ordinances:
  - Coachella
  - Long Beach
  - Montebello
  - Oakland
  - San Leandro
  - West Hollywood
  - Los Angeles County
- Legal Challenges:
  - California Grocers Association has brought lawsuits against Long Beach, Montebello, West Hollywood, San Leandro, and Oakland’s ordinances arguing that they are unconstitutional because they are not applied equally across industries and are preempted by the National Labor Relations Act

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

# 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.



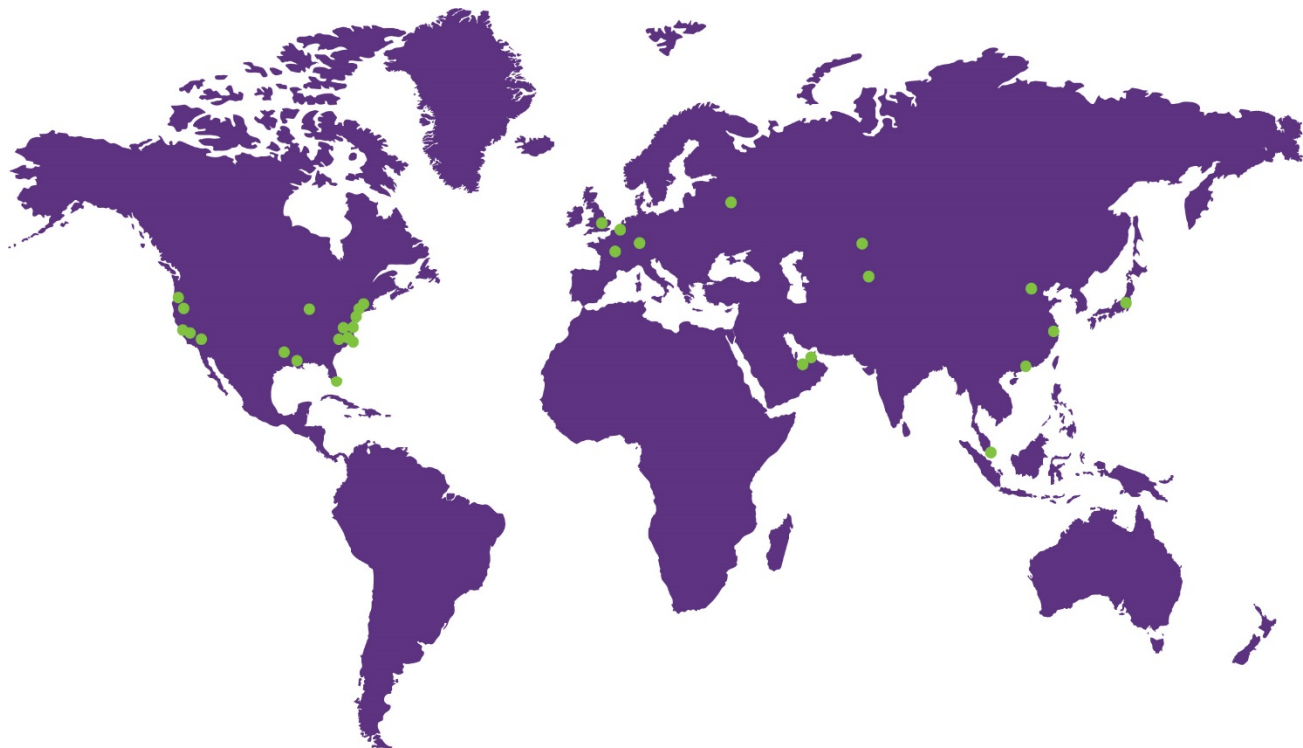


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