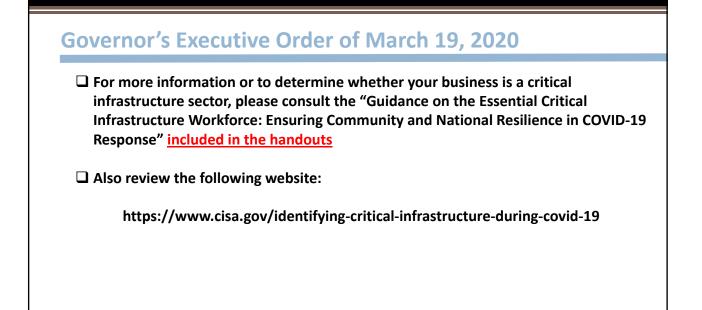


Governor's Executive Order of March 19, 2020

Those sectors are:

Chemical Sector Communications Sector Dams Sector Emergency Services Sector Energy Sector Food and Agriculture Sector Healthcare and Public Health Sector Nuclear Reactors, Materials, and Waste Sector

Commercial Facilities Sector Critical Manufacturing Sector Defense Industrial Base Sector Emergency Services Sector Financial Services Sector Government Facilities Sector Information Technology Sector Transportation Systems Sector





- **D** To the maximum extent possible, have employees work remotely
- Non-exempt hourly employees
 - □ Make sure they record all hours worked and meal periods
 - □ Make sure they acknowledge they have taken all of their required rest periods
 - **Use paper time sheets if needed**
 - □ Make sure they know they are not to work off the clock
- **Provide necessary equipment (computers, laptops, printers, phones)**
- **California Labor Code section 2802**
 - □ If employees are using their own equipment, provide a reimbursement for the reasonable expense for such use
 - □ Internet access?

Reduced Hours/Reductions in Force/Furloughs

Let's define our terms:

- **Reduced hours:** A reduction in work hours and pay for some or all of an employer's workforce
- **Reductions in force:** "Permanent" layoffs of some or all of an employer's workforce
- **Furlough**: Temporary layoffs of some or all of an employer's workforce, generally without pay

Reduced Hours

- **D** Employers are permitted to reduce hours and pay as necessary
- **G** For hourly employees, this is simple
- □ For exempt employees, a little more difficult
 - Employers may temporarily reduce an exempt employee's salary and hours due to economic difficulties
 - □ Must still pay a salary that meets California's minimum salary threshold
 - **25** or fewer employees: \$49,920
 - **26** or more employees: \$54,080

Reduced Hours/Reductions in Force/Furloughs

- **D** Reductions in force and furloughs potentially implicate federal and California WARN Acts
 - WARN Acts generally require 60 days advance notice prior to any covered plant closing or mass layoff

Federal WARN Act

- □ "Covered Employers" are generally those with 100 or more full-time employees
- **Covers mass layoffs and plant closings that meet certain numerical thresholds**
- **u** Furloughs of less than six months generally do not require notice under federal WARN Act
- □ Under federal WARN, a covered employer may order a mass layoff or plant closure before the conclusion of the 60-day period if caused by:
 - Business circumstances that were not reasonably foreseeable as of the time notice would have been required
 - A natural disaster
- COVID-19 very likely qualifies as an unforeseen business circumstance

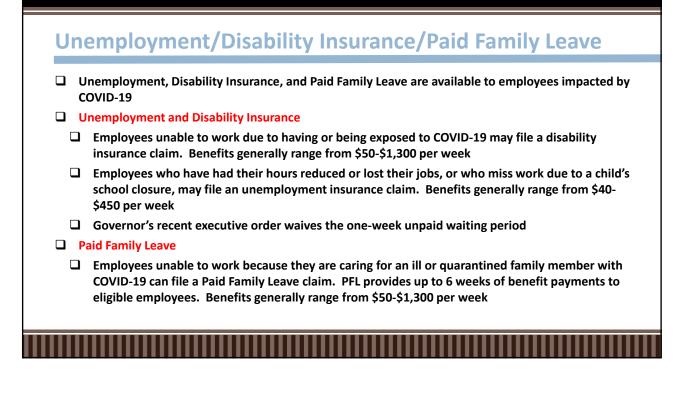
Reduced Hours/Reductions in Force/Furloughs

California WARN Act

- Applies to employers who operate a "covered establishment" (any industrial or commercial facility that employs, or has employed within the preceding 12 months, 75 or more persons)
- □ Covers mass layoffs, relocations, or terminations of 50 or more employees
- □ California's WARN Act does not contain an exception for furloughs and recent case law suggests that a furlough would qualify as a mass layoff
- Under California's WARN Act, an employer may order a mass layoff before the conclusion of the 60-day period if caused by:
 - □ A "physical calamity" or "act of war"
 - □ It is unclear whether COVID-19 would qualify as a physical calamity. Those usually refer to floods, fires, earthquakes, or the like
 - □ The employer is actively seeking capital or business and would be unable to secure it if forced to provide WARN notice
 - **D** Technical requirements of this exemption are specific and significant

Reduced Hours/Reductions in Force/Furloughs

- California WARN Act
 - **O**n the night of March 17, 2020, Governor Gavin Newsom issued Executive Order N-31-20
 - □ For the period beginning March 4, 2020 through the end of the declared state of emergency, significant portions of California's WARN Act are <u>suspended</u> for employers who order a mass layoff, relocation, or termination at a covered establishment
 - **Employers must still:**
 - □ Verify that the mass layoff or terminations were due to COVID-19 circumstances which were not reasonably foreseeable as of the time that the normal, 60-day notice would have been required
 - Give as much advance notice as is practicable and, at the time notice is given, provide a brief statement of the basis for reducing the notification period along with the information required by the federal WARN Act
 - Include the following statement in its notice to employees: "If you have lost your job or been laid off temporarily, you may be eligible for Unemployment Insurance (UI). More information on UI and other resources available for workers is available at labor.ca.gov/coronavirus2019"



Unemployment Insurance Work Sharing Program

- Employers experiencing a slowdown in business due to COVID-19 may apply for EDD's Work Sharing Program
- □ Allows employers to seek an alternative to layoffs by retaining employees by reducing their hours and wages that can then be partially offset with unemployment insurance benefits
- □ Workers approved to participate in the Work Sharing Program receive the percentage of their weekly unemployment insurance benefit amount based on the percentage of hours and wages reduced, not to exceed 60%
- **D** Employers wishing to utilize this program must contact EDD
- □ See the following link for more details:

https://www.edd.ca.gov/Unemployment/Work_Sharing_Program.htm

Families First Coronavirus Response Act

- **Enacted on March 18, 2020**
- Goes into effect April 2, 2020
- □ Key provisions for employers:
 - □ Emergency Family and Medical Leave Expansion Act
 - Emergency Paid Sick Leave Act
 - □ Tax credits for employers

Families First Coronavirus Response Act

Emergency Family and Medical Leave Expansion Act

- □ Special leave provisions with respect to COVID-19 that only applies to employers with <u>fewer than 500</u> <u>employees</u>, and only to employees who have been employed for at least 30 days
- Amends the FMLA to provide up to 12 weeks of leave "because of a qualifying need related to a public health emergency"
- "Qualifying need"
 - □ Employee unable to work due to a need for leave to care for the son or daughter under 18 of such employee if the school or care facility has been closed, or the child care provider is unavailable due to an emergency with respect to COVID-19 declared by a federal, state, or local authority
 - **D** Employees must provide notice as soon as practicable when the need for leave is foreseeable
- The first ten days of leave are unpaid, but an employee may elect to substitute any accrued vacation, personal leave, or sick leave, and employers are prohibited from requiring the substitution of paid leave

Families First Coronavirus Response Act

Emergency Family and Medical Leave Expansion Act, cont'd...

- □ If leave exceeds 10 days, it must be paid
- Paid at the rate of at least two-thirds of employee's regular rate of pay based on the number of hours an employee normally would have been scheduled to work
- **G** For employees with irregular hours, a formula is used
- □ In all cases, an employer need not pay an employee more than \$200 per day and \$10,000 in total
- □ Employers with 25 or more employees must restore employees to their positions following their return from leave in the same manner as under the FMLA
- **D** Employers with less than 25 employees must reinstate employees unless certain conditions are met
- **D** The Department of Labor may issue regulations:
 - □ To exclude certain healthcare providers and emergency responders from being eligible for public health emergency leave
 - **I** To exempt businesses with fewer than 50 employees from having to provide paid emergency leave

Families First Coronavirus Response Act

Emergency Paid Sick Leave Act

- **D** Provides for paid emergency sick leave in the case of certain absences related to COVID-19
- Again, only applies to employers with fewer than 500 employees
- **An employee employed for at least 30 days is entitled to paid sick leave if the employee is:**
 - **U** Subject to a federal, state, or local quarantine or isolation order
 - **Has been advised by a doctor to self-quarantine because of COVID-19**
 - □ Is experiencing symptoms of COVID-19 and seeking a medical diagnosis
 - □ Is caring for an individual who is subject to a quarantine order or who has been advised to selfquarantine
 - □ Is caring for a son or daughter if the school or child care provider has been closed, or if the provider is unavailable due to COVID-19
 - **I** Is experiencing any other substantially similar condition specified by the Secretary of HHS

Families First Coronavirus Response Act

Emergency Paid Sick Leave Act, cont'd...

□ If eligible for paid sick leave, employees are entitled to:

- □ Up to 80 hours of paid sick leave; part-time employees are entitled to a number of hours equal to the average number of hours that such employee works over a two-week period
- □ Paid sick leave is paid at the employee's regular rate of pay; if they are caring for a family member, employees are entitled to two-thirds of their regular rate of pay.
- □ Paid sick leave may be capped at \$511 per day per employee (\$5,110 aggregate) or \$200 per day per employee (\$2,000 aggregate), depending on the reason for the leave
- The paid sick leave provided by this new law must be offered in addition to any existing leave benefits and employers are not allowed to change their policies after enactment so as to avoid these new requirements
- **D** Employers may exclude employees who are healthcare providers or first responders

For More Information

California's Coronavirus Website:

https://covid19.ca.gov

□ Federal Government's Coronavirus Website:

https://www.coronavirus.gov

Centers for Disease Control and Prevention COVID-19 website:

https://www.cdc.gov/coronavirus/2019-nCoV/index.html

Extra Credit...

- Many of the following slides were rendered obsolete by the Governor's order for a large percentage of employers
- However, if you operate in an essential industry or are a critical infrastructure component and intend to continue operations during this time, the following slides may apply

Preparing Your Workplace

□ Hygiene

- **D** Post CDC-approved posters regarding proper hygiene
- **Q** Require hand washing upon arriving at work and throughout the day
- **D** Provide hand sanitizers, tissues, and no-touch disposal cans
- **Q** Routinely clean all surfaces which are frequently touched
- □ Shared offices and hot-seating arrangements
 - All such employees must wipe down their phone, keyboard, mouse, and other work surfaces anytime they are surrendering the work station to another employee
- **Prohibit sharing of personal items between employees (brushes, dishes, cups, etc.)**
- □ No food sharing

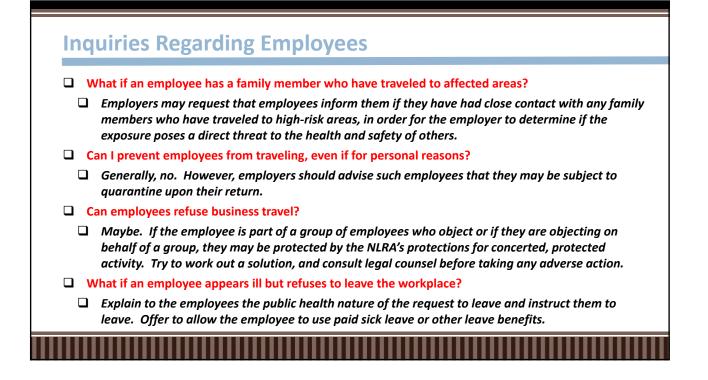
Preparing Your Workplace

Business Operations

- No business travel unless absolutely necessary
- □ No business meals or in-person meetings unless absolutely necessary
- □ No meetings in the office unless absolutely necessary
- **Cross-train essential personnel**
- **Use technology to your advantage**
 - Remote work*
 - □ Online meetings (Zoom, GoToMeeting, Slack, etc.)

Inquiries Regarding Employees

- How much information may an employer request from an employee who calls in sick?
 - During a pandemic, employers may ask such employees if they are experience symptoms of the virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat. Employers must maintain this information as a confidential medical record.
- □ When may an employer take body temperatures?
 - □ While such measurements are generally considered medical examinations, because the CDC and state/local health authorities have recognized community spread, employers may take such measurements. However, remember that some people with COVID-19 are asymptomatic.
- **Can employers require employees to stay home if they have symptoms?**
 - **U** Yes. The CDC has stated that employees who are ill with symptoms should leave the workplace.
- **Can an employer require a doctor's note/fitness for duty certification?**
 - Yes. However, recognize that doctors and hospitals may be too busy to provide in-depth certifications. In such cases, consider relying on a form from a local clinic, stamp, email, or other document to certify that an individual does not have the pandemic virus.



Inquiries Regarding Applicants

- □ If an employer is hiring, may it screen applicants for symptoms of COVID-19?
 - □ Yes, but only after making a conditional offer of employment. Job offers should be in writing and include as a condition that the employee test negative for COVID-19.
- May an employer take an applicant's temperature as part of a post-offer, pre-employment medical examination?
 - □ Yes.
- May an employer delay an applicant's start date who has COVID-19 or related symptoms?
 - **U** Yes. According to the CDC, such individuals should not be in the workplace.
- May an employer withdraw a job offer when it needs the applicant to start immediately but the individual has COVID-19 or related symptoms?
 - □ Yes. Based on current CDC guidance, such individuals cannot safely enter the workplace, and therefore the employer may withdraw the job offer.

