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WOMEN  
ENTREPRENEURS  
LAUNCH

THE  
EMPLOYMENT  
LAW  
PERSPECTIVE ON  
NAVIGATING THE  
COVID-19  
PANDEMIC

# AGENDA

Stay at Home Orders

Employee Privacy

Working from Home

Furloughs and Layoffs

Families First Coronavirus Response Act (FFCRA)

CARES Act

Unemployment Insurance

Disability Insurance

# STAY AT HOME: STATE AND LOCAL

## Shelter-in-Place

- What are essential businesses?
- What must nonessential businesses do?

## California Stay-at-Home

- What are essential businesses?
- How does this work with the county shelter-in-place orders?

# SHELTER IN PLACE

Extended to  
May 3, 2020

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Started with Marin, San Francisco, Contra Costa, Alameda, San Mateo, and Santa Clara counties.

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All residents required to remain at home unless doing an essential activity or working in an essential business.

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All nonessential businesses required to shut down.

## Essential businesses include the following:

- Healthcare operations and essential infrastructure;
- Grocery stores, certified farmers' markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish and poultry, and any other household consumer products;
- Food cultivation, including farming, livestock, and fishing;
- Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
- Specific construction projects;
- Newspapers, television, radio, and other media services;

## Essential businesses (continued):

- Gas stations and auto-supply, auto-repair, and related facilities;
- Bicycle repair and supply shops;
- Banks and related financial institutions;
- Service providers that enable residential transactions;
- Hardware stores;
- Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, essential activities, and essential businesses;
- Arborists, landscapers, gardeners, and similar service professionals;
- Businesses providing mailing and shipping services, including post office boxes;
- Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions;

## Essential businesses (continued):

- Laundromats, drycleaners, and laundry service providers;
- Restaurants and other facilities (including schools) that prepare and serve food, but only for delivery or carry out;
- Businesses that supply products needed for people to work from home;
- Funeral home providers, mortuaries, cemeteries, and crematoriums for the purpose of transporting, preparing, or processing bodies or remains;
- Businesses that supply other essential businesses with the support or supplies necessary to operate;
- Businesses that ship or deliver groceries, food, goods or services directly to residences;



## Essential businesses (continued):

- Airlines, taxis, and other private transportation providers providing transportation services necessary for essential activities;
- Home-based care for seniors, adults, or children;
- Residential facilities and shelters for seniors, adults, and children;
- Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities;
- Moving services that facilitate residential or commercial moves that are allowed under this Order;
- Childcare facilities providing services that enable employees exempted in this Order to work as permitted.

# SOCIAL DISTANCING PROTOCOL

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All essential businesses must post a social distancing protocol by April 2.

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Protocol must follow the Social Distancing Protocol form attached to the Bay Area Orders.

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Protocol must be readily accessible and viewable.

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All employees must be provided with the protocol.

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Businesses should be prepared to provide evidence of implementation of the protocol if asked.

# CALIFORNIA'S STAY AT HOME ORDER

March 19: Governor Newsom signs Executive Order N-33-20.

Requires California residents to stay at home unless working in one of 16 critical infrastructure sectors.

Businesses considered nonessential across California must shut down.

How does this interact with county orders?

# EMPLOYEE PRIVACY

What is an employee obligated to tell an employer?

What is an employer obligated to tell employees if another employee was exposed to COVID-19?

## EMPLOYER OBLIGATIONS IN THE WORKPLACE

- Educate employees about practices that will slow COVID-19.
- Encourage social distancing in the workplace.
- Isolate employees who may potentially be sick.
- Clean and disinfect areas.
- Provide for flexibility for employees who are sick, self-quarantining, or caring for someone who is sick.
- Encourage working from home where possible.

# OSHA OBLIGATIONS

COVID-19 is a recordable illness if it is:

- Confirmed;
- Work-related; and
- Results in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness.

If the COVID-19 case meets the requirements, OSHA recording requirements apply.

# LAYOFFS

Governor Newsom temporarily suspended the WARN Act.

Employees who are furloughed or laid off may collect unemployment but are not eligible for paid sick leave or FMLA leave.

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

Became law March 18

Effective April 1

Emergency Paid Sick Leave (EPSL)

Emergency Family Medical Leave Act (EFMLA)

Tax Credits

Unemployment

Small Business Exemption



# FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

Effective April 1

17 Apr.

1 Apr.

Grace period until April 17

- Will not be enforced if employers provide a written commitment to comply moving forward and can demonstrate that:
  - After April 17, the law will be fully enforced.

# WHO IS SUBJECT TO THE FFCRA?

- Private Employers with less than 500 employees
- Public agencies
- For EPSL, “[a]ny other entity that is not a private entity”

# EMERGENCY PAID SICK LEAVE

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80 hours of paid sick leave for one of the following six reasons:

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The employee is subject to a quarantine order related to COVID-19;

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The employee must quarantine on the advice of a health care provider because of COVID-19;

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The employee experiences symptoms of COVID-19 and is seeking a medical diagnosis.

# EMERGENCY PAID SICK LEAVE

(CONTINUED)

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The employee is caring for an individual subject to or advised to quarantine;

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The employee is caring for a minor child whose school or place of care is closed, or unavailable, due to COVID-19 precautions;

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The employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and The Treasury.

# EMERGENCY PAID SICK LEAVE

(CONTINUED)

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How is EPSL paid out?

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Reasons 1-3: Employee paid full rate of regular pay up to \$511/day (\$5,110 total).

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Reasons 4-6: Employee paid 2/3 rate of regular pay up to \$200/day (\$12,000 total).

# EMERGENCY FAMILY MEDICAL LEAVE

- ❖ Up to 12 weeks of leave
  - First two weeks unpaid, but employee can use EPSL
  - Weeks 3-12 pay at 2/3 regular rate up to \$200/day
- ❖ May be taken only when an employee is unable to work (or telework) to care for a minor child if the child's school or place of childcare has been closed or is unavailable due to a public health emergency.

## DOES LEAVE HAVE TO BE CONTINUOUS

- Both EPSL and EFMLA can be done intermittently.
- Employer and employee must agree to how that intermittent leave will be managed.

# EXEMPTIONS



Emergency First  
Responders and  
Healthcare  
Providers



Small Business  
Exemption



# EMERGENCY FIRST RESPONDER AND HEALTHCARE PROVIDER EXEMPTION

Healthcare providers and emergency first responders are exempted from the leave requirements.

- **Healthcare Provider:** a doctor of medicine or osteopathy who is authorized to practice medicine or surgery.
- **Emergency First Responder:** an emergency first responder is an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19.

## SMALL BUSINESS EXEMPTION

Businesses less than 50 employees are exempted from providing leave due to school or childcare closures if:

- Expenses and financial obligations are greater than available revenues and cause the business to cease operating;
- Employee absence would substantially risk financial health or operational capabilities;
- Insufficient workers who are able, willing, and qualified to work, and the work is needed for business to operate at a minimal capacity.

# TAX CREDIT

Federal government offers a 1:1 tax credit on EPSL and EFMLA paid out by the employer.

When is this available to the employer?

What does the employer need to do to get the tax credit?

# UNEMPLOYMENT

\$1 billion in emergency grants to state unemployment programs that satisfy the following criteria:

- Require employers to notify laid-off workers of unemployment eligibility;
- Ensure that workers have two ways of applying for benefits; and
- Update applicants of receipt and processing of applications.

# CARES ACT



Adds \$600/week  
for four months to  
unemployment  
benefits.



At least partially  
forgivable loans.

## A NOTE ABOUT UNEMPLOYMENT

- EDD indicated that independent contractors, self-employed workers, and gig workers may be eligible for unemployment benefits.
- The one week waiting period has been waived by executive order in California.
- Laid off employees are eligible for unemployment but not sick leave under the FFCRA.

# DISABILITY

Can collect disability if unable to work due to having been exposed to COVID-19.



This presentation provides only general legal information, and not specific legal advice. Information contained herein is not a substitute for a personal consultation with an attorney.

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