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YOUR COVID-19 EMPLOYEE RIGHTS REFERENCE GUIDE

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1. I'M AN EMPLOYEE, INDEPENDENT CONTRACTOR, OR SELF- EMPLOYED AND I'M LOSING WAGES. WHAT WILL HELP?.....	3
A. I CANNOT WORK BECAUSE MY HOURS HAVE BEEN REDUCED, BUSINESS HAS BEEN CLOSED AND/OR SUBJECT TO SHELTER IN PLACE ORDER	3
B. I CANNOT WORK BECAUSE I HAVE BEEN EXPOSED TO COVID-19 AND/OR I AM IN AGE-VULNERABLE CATEGORY	3
C. I CANNOT WORK BECAUSE I AM TAKING CARE OF AN ILL OR QUARANTINED FAMILY MEMBER.....	4
2. WHAT IF MY CHILD'S SCHOOL IS CLOSED BECAUSE OF CORONAVIRUS?.....	4
Federal Response, California School Emergency Leave and Unemployment Benefits May Help Some Workers.....	4
3. WHAT IF I GET SICK, OR I NEED TO CARE FOR FAMILY?	6
State and Local Sick or Medical Leave Laws Offer Protection – talk to your employer to receive these benefits and know your rights	6
A. PAID LEAVE OPTIONS IF YOU OR A FAMILY MEMBER ARE SICK.....	6
B. HOW MUCH PAID TIME OFF IS AVAILABLE?	6
C. CAN MY EMPLOYER RETALIATE AGAINST ME?	7
D. IS THERE UNPAID LEAVE AVAILABLE?	7
4. WHAT IF I'M VULNERABLE TO COVID-19?	8
A. CALIFORNIA'S DISABILITY RIGHTS LAW PROVIDES FOR REASONABLE ACCOMMODATION	8
B. CAN MY EMPLOYER REFUSE A "REASONABLE ACCOMMODATION" OR TERMINATE ME FOR REQUESTING ONE?	9
5. WHAT IF SOMEONE I LIVE WITH IS VULNERABLE TO COVID- 19?	9
6. WHAT IF I AM OR COULD BE EXPOSED TO COVID-19 IN MY WORKPLACE?.....	10
A. EMPLOYER ILLNESS AND INJURY PREVENTION PROGRAMS	10
B. WORKER'S COMPENSATION	10
7. WHAT IF I AM TERMINATED OR FURLOUGHED?	11
8. OTHER MEASURES YOU CAN TAKE TO REDUCE YOUR EXPENSES AND ALLEVIATE WAGE LOSS.....	12
9. ADDITIONAL RESOURCES AVAILABLE.....	13

1. I'M AN EMPLOYEE, INDEPENDENT CONTRACTOR, OR SELF-EMPLOYED AND I'M LOSING WAGES. WHAT WILL HELP?

California Workers Can Apply for Wage Replacement for Disability and Reduced Work Hours

Two state-run programs are available for employees in need of wage replacement during a “Shelter in Place” order, and to support social distancing for their health and safety – **State Disability Insurance (SDI)** and **Unemployment Insurance (UI)**, both administered by the Employment Development Department (EDD). Governor Newsom’s Executive Order waived the usual one-week waiting period for people who are unemployed and/or disabled as a result of COVID-19. **You should apply now because the longer you wait you may be losing out on benefits!**

A. I CANNOT WORK BECAUSE MY HOURS HAVE BEEN REDUCED, BUSINESS HAS BEEN CLOSED AND/OR SUBJECT TO SHELTER IN PLACE ORDER

If an employer closes the workplace due to COVID-19, including as a result of a “Shelter in Place” order, or reduces hours of workers, and doesn’t pay or only partially pays its employees, workers can apply for Unemployment Insurance (UI) or, if eligible, SDI. Unemployment Insurance benefits cover approximately 50 percent of wages, up to a maximum of \$450 per week, which is taxable.

The EDD has outlined how self-employed, independent contractors can qualify for UI. State Disability Insurance is only available for independent contractors who have enrolled in Elective Coverage. Workers are often misclassified as independent contractors and may have the same rights to benefits as employees under AB 5, even if their employer calls them an “independent contractor.”

DO NOT LOSE OUT ON MONEY AND APPLY ASAP. YOU CAN APPLY HERE:

https://edd.ca.gov/unemployment/Filing_a_Claim.htm

B. I CANNOT WORK BECAUSE I HAVE BEEN EXPOSED TO COVID-19 AND/OR I AM IN AGE-VULNERABLE CATEGORY

If you’re unable to work due to having been exposed to COVID-19 (certified by a medical professional), you can file a Disability (DI) claim. State Disability Insurance eligibility defines disability to include any illness or injury preventing regular or customary work. **Benefits cover 60-70 percent of wages up to a maximum of \$1,300 per week for up to 52 weeks** and are tax-exempt. A worker must be unable to work for at least eight days and must submit medical certification by a health practitioner prior to issuance of

benefits. Applications may be submitted within 49 days of the first date they had to stop working because of disability.

While the EDD hasn't yet confirmed that applications citing only age-related vulnerabilities will be approved, they have confirmed that people who cannot work due to "having or being exposed" to COVID-19, if certified by a medical professional, can file a Disability Insurance claim.

Older workers who are in an age-defined vulnerable population and who obtain medical certification of their age-related condition as an "illness" may also be eligible for disability benefits, although there is no certain answer to this question yet. When doctors or other healthcare providers are filling in the disability forms, they should consider using "R54," the International Classification of Diseases code for "age-related physical debility" when there isn't a more specific condition.

DO NOT LOSE OUT ON MONEY AND APPLY ASAP. YOU CAN APPLY HERE:

https://www.edd.ca.gov/Disability/SDI_Online.htm

C. I CANNOT WORK BECAUSE I AM TAKING CARE OF AN ILL OR QUARANTINED FAMILY MEMBER

EDD also administers Paid Family Leave (PFL) benefits, allowing up to six weeks of PFL at the SDI rate to Californians who are unable to work because they are caring for an ill or quarantined family member with COVID-19, if certified by a medical professional.

DO NOT LOSE OUT ON MONEY AND APPLY ASAP. YOU CAN APPLY HERE:

https://www.edd.ca.gov/Disability/How_to_File_a_PFL_Claim_in_SDI_Online.htm

More information is also provided below.

2. WHAT IF MY CHILD'S SCHOOL IS CLOSED BECAUSE OF CORONAVIRUS?

Federal Response, California School Emergency Leave and Unemployment Benefits May Help Some Workers

If you miss work to care for your child after their school closes, you may be eligible for Unemployment Insurance. The Employment Development Department is handling school closure applications on a case-by-case basis, and encouraging claims for partial benefits where the employer is allowing reduced hours, but has not yet clarified whether the usual

requirements of being available for work will be waived where the employer does not allow reduced hours. Employees should apply right away since the usual 7-day waiting period for benefits has been waived due to COVID-19. Read more about this below.

DO NOT LOSE OUT ON MONEY AND APPLY ASAP. YOU CAN APPLY HERE:

https://edd.ca.gov/unemployment/Filing_a_Claim.htm

Once the **'Families First' Coronavirus Response Act** goes into effect April 3, employees who have worked for a covered employer (500 employees or less or public sector employers) more than 30 days may be eligible for twelve weeks of leave, paid at two-thirds of regular pay, up to a maximum of \$200 per day or \$10,000 total.

The "qualifying need" for this relief is limited to circumstances where an employee is unable to work (or telework) due to a need to care for a minor child if the child's school or place of child care has been closed or is unavailable due to a public health emergency.

The first segment of emergency FMLA leave (10 days) can be unpaid. An employee can opt to substitute accrued vacation, personal, or sick leave during this time, but an employer may not require an employee to do so.

The remaining 10 weeks of FMLA leave is required to be paid, generally at two-thirds of the employee's regular rate, for the number of hours the employee would otherwise be scheduled to work. The bill limits the amount of required pay for leave to no more than \$200 per day and \$10,000 in the aggregate.

Emergency FMLA leave taken is generally job-protected, meaning the employer must restore employees to their prior positions (or an equivalent) upon the expiration of their need for leave. The bill includes an exception to this requirement for employers with fewer than 25 employees, if the employee's position no longer exists following leave due to operational changes occasioned by a public health emergency (e.g., a dramatic downturn in business caused by the COVID-19 pandemic), subject to certain conditions.

The final bill retains language allowing the Secretary of Labor to exclude health care providers and emergency responders from the definition of employees who are allowed to take such leave, and to exempt small businesses

Also, under California's Labor Code, employers with 25 or more employees working at the same location must allow employees to take up to 40 hours of leave per year to address an emergency at a child's day care or school. However, an employee must still notify the employer in advance.

DO NOT LOSE OUT ON MONEY. CONTACT YOUR EMPLOYER PRIOR TO APRIL 3, 2020, SO THAT YOU CAN TAKE ADVANTAGE OF THIS BENEFIT AS SOON AS POSSIBLE.

3. WHAT IF I GET SICK, OR I NEED TO CARE FOR FAMILY?

State and Local Sick or Medical Leave Laws Offer Protection – talk to your employer to receive these benefits and know your rights

A. PAID LEAVE OPTIONS IF YOU OR A FAMILY MEMBER ARE SICK

Employees who are sick can take accrued paid sick days. Paid sick leave can be used for absences due to illness, the diagnosis, care or treatment of an existing health condition or preventative care for the employee or the employee's family member.

Preventative care may include self-quarantine as a result of potential exposure to COVID-19 if quarantine is recommended by civil authorities. In addition, there may be other situations where an employee may exercise their right to take paid sick leave, or an employer may allow paid sick leave for preventative care. For example, where there has been exposure to COVID-19 or where the worker has traveled to a high-risk area.

The employer cannot require that the worker use paid sick leave; that is the worker's choice. If the worker decides to use paid sick leave, the employer can require they take a minimum of two hours of paid sick leave. The determination of how much paid sick leave will be used is up to the employee.

Yes, if an employee does not qualify to use paid sick leave, or has exhausted sick leave, other leave may be available. If there is a vacation or paid time off policy, an employee may choose to take such leave and be compensated provided that the terms of the vacation or paid time off policy allows for leave in this circumstance.

B. HOW MUCH PAID TIME OFF IS AVAILABLE?

How many sick days are available depends on employer policies, although California requires employers to provide minimally three days of paid sick leave and some cities require even more. Employees who work for employers of 50 or more people have more rights and may be eligible for up to twelve weeks of unpaid time off. Employees sent home but are asked to work must be compensated for that work without loss of sick leave.

The Healthy Workplaces, Healthy Families Act of 2014 (Lab. Code §§ 245-249, 2810.5) requires all California employers to provide eligible employees at least **three days of paid sick leave**. Los Angeles, San Diego, San Francisco, Santa Monica, Oakland, Berkeley, and

Emeryville also have local ordinances requiring as much as **six or nine days of sick leave per year**. Google your city and “paid sick” leave to find out exactly how much for your city.

In addition, on March 18th, Congress passed the ‘Families First’ Coronavirus Response Act to provide emergency paid sick leave and emergency paid family leave. This bill provides two weeks of paid sick leave (up to a maximum of \$511 a day or \$200 a day if caring for a sick family member or a child whose school or day care is closed) for workers who are ill, quarantined, seeking diagnosis or preventative care for coronavirus, or if caring for sick family members. This is for employees, independent contractors, self-employed workers who pay payroll taxes (most do) and who are employed by an employer who has less than 500 employees. You must have been working at minimum 30 days to qualify. This law expires December 31, 2020.

EDD also administers Paid Family Leave (PFL) benefits, allowing up to six weeks of PFL at the SDI rate to Californians who are unable to work because they are caring for an ill or quarantined family member with COVID-19, if certified by a medical professional.

DO NOT LOSE OUT ON MONEY AND APPLY ASAP. YOU CAN APPLY HERE:

https://www.edd.ca.gov/Disability/How_to_File_a_PFL_Claim_in_SDI_Online.htm

C. CAN MY EMPLOYER RETALIATE AGAINST ME?

Employers who retaliate against employees for taking sick leave that is required by law **risk liability for wrongful termination lawsuits**. What is clear is that the legally-required amounts of sick leave aren’t enough, especially if a worker is trying to get through a 14-day quarantine, or faces uncertainty with vulnerable members of their household. Workers who are often misclassified as independent contractors have the same rights to sick leave as employees under AB 5, even if their employer calls them an “independent contractor.” Misclassified employees can file claims in court or at the Department of Labor Standards Enforcement (DLSE).

D. IS THERE UNPAID LEAVE AVAILABLE?

For people who work for an employer with at least 50 employees within 75 miles of their worksite, California law requires employers to provide **twelve weeks of job-protected leave** each year under the Family Medical Leave Act (FMLA) or the California Family Rights Act (CFRA) for a “serious health condition” of the employee or a member of their family. To qualify for this leave, the employee must have worked for the employer for at least one year total during their lifetime and have worked at least 1,250 hours in the last calendar year. So, if an employee or family member contracts COVID-19, they are likely to be protected by the medical leave laws. These laws may also protect individuals with compromised immune

systems if a doctor takes them off work because they or a family member suffer from a chronic condition.

It's important to understand that FMLA and CFRA leave is **unpaid (although [State Disability Insurance](#) may be available as outlined above).**

4. WHAT IF I'M VULNERABLE TO COVID-19?

A. CALIFORNIA'S DISABILITY RIGHTS LAW PROVIDES FOR REASONABLE ACCOMMODATION

The law requires employers to consider offering work-from-home or medical leaves of absence as a reasonable accommodation under the California Fair Employment and Housing Act (FEHA) for people who qualify as having a disability under the law. This is a case-by-case analysis, but employees with compromised immune systems or who are medically at risk should assert their rights and request the accommodations they need to remain safe.

California employers with at least 5 employees are required to provide reasonable accommodations, unless they are able to meet a very high standard to prove that doing so would cause an undue hardship.

The best practice is to submit written documentation of the disability and the need for the accommodation, including a doctor's note. If that's not possible given the impacted healthcare system, employees can explain their need for accommodations to their employer and refer to publicly available information to justify the need for reasonable accommodation.

For instance, the California Department of Public Health urges high-risk individuals to "stay home as much as possible," and the San Francisco Department of Public Health urges workers to "telecommute if possible," and "avoid contact with people who are sick."

The extraordinary conditions and risks of COVID-19 will broaden the range of employees who qualify for reasonable accommodations under FEHA. Disability under FEHA is broadly construed to mean a physical disability, including a condition that affects the immunological system and limits a major life activity. The law already recognizes that "major life activities" include interacting with others, working, and major functions of the immune system. There is an exception that refers to the common cold and common flu, but there is nothing common about COVID-19, so that exception should not apply.

The goal of reasonable accommodations is to keep the employee working (and earning a paycheck). So, the first possibility to consider is telecommuting. **Telecommuting is a**

reasonable accommodation where it allows the employee to continue to perform the essential functions of their job. For employees who can work via computer, video-conferencing and phone, this is an ideal choice. Employers can refuse this accommodation if letting the employee telecommute imposes an undue hardship on the employer's operations.

If a job cannot be done remotely, a last-resort accommodation is a leave of absence, which is an option under the law where "the leave is likely to be effective in allowing the employee to return to work at the end of the leave, with or without further reasonable accommodation, and does not create an undue hardship for the employer."

B. CAN MY EMPLOYER REFUSE A "REASONABLE ACCOMMODATION" OR TERMINATE ME FOR REQUESTING ONE?

Employers cannot have blanket policies refusing telecommuting or medical leaves (or any other possible accommodation). Instead, employers must **engage in a good faith interactive process to find an effective reasonable accommodation.**

Discrimination or retaliation against a person with a disability, including disciplining them, treating them differently than other workers or terminating them is prohibited under California law. This protection extends to people who the employer assumes or "regards" as a person with a disability. While employers can require medical documentation of a disability and the employee's limitations, they cannot force employees to disclose a specific health condition or disability.

5. WHAT IF SOMEONE I LIVE WITH IS VULNERABLE TO COVID-19?

The California Family Rights Act (CFRA), discussed above, requires twelve weeks of job-protected leave for covered employees caring for a "serious health condition" of a family member. Up to six weeks of Paid Family Leave (PFL) benefits are available through the EDD. Apply here:

https://www.edd.ca.gov/Disability/How_to_File_a_PFL_Claim_in_SDI_Online.htm

Employees are also protected under the California [Fair Employment and Housing Act \(FEHA\)](#) from discrimination or retaliation, such as harassment or wrongful termination, due to a known relationship or association with someone with a known disability. This includes making a request for a reasonable accommodation, whether that request is granted or not. While no court has ruled yet on the specific issue of whether an employer must grant an accommodation based on a family member's disability, [one Appellate Court](#) considering this issue discussed the possibility that the

law” may reasonably be interpreted to require accommodation based on the employee’s association with a physically disabled person.”

It is highly recommended to review this type of complex situation with an attorney familiar with employment law.

6. WHAT IF I AM OR COULD BE EXPOSED TO COVID-19 IN MY WORKPLACE?

A. EMPLOYER ILLNESS AND INJURY PREVENTION PROGRAMS

In furtherance of its mission to ensure safe workplaces and enforcing requirements for all employers to have an Injury and Illness Prevention Program, Cal/OSHA has issued Interim Guidelines for General Industry and other specific industries, like childcare providers and health-care workers, from COVID-19. These guidelines include actively encouraging sick employees to stay home, sending employees with acute respiratory symptoms home immediately, and preparing an outbreak response plan in the event of an outbreak.

For an employee who is concerned about workplace safety, “internal” whistle-blowing is a protected activity when a complaint is made to a manager that identifies facts that could violate Cal/OSHA requirements. For more serious situations, formal complaints can be filed with Cal/OSHA, and written documentation could assist if the employer disputes that internal whistle-blowing occurred.

An employee may also refuse to perform work that would result in a Cal/OSHA violation that creates **a real and apparent hazard** to the employee or their coworkers. These situations are complex, and consultation with an attorney is highly recommended, because an employer can take the position that an undocumented failure to go to work is a non-retaliatory business reason to terminate employment.

Determinations of which precise businesses and functions are deemed “essential” are made by the Department of Public Health and County Health Officers.

B. WORKER’S COMPENSATION

Employers are responsible to provide compensation through the worker’s compensation system for injuries arising in the course of employment.

An injured worker who was exposed to and contracted COVID-19 at or through their work can make a claim by completing [DWC1 form](#) (google this online) and sending it to their employer.

Any workplace exposure must be a significant contributing factor to an employee's injury. Employers frequently dispute whether an injury is work-related. Those disputes are typically resolved by the Worker's Compensation Appeals Board based on the medical report of a Panel Qualified Medical Examiner appointed by the Division of Worker's Compensation, likely a specialist in Immunology or Internal Medicine.

If the claim is approved, benefits include temporary disability wage replacement, medical care, and compensation for permanent impairment. Unfortunately, misclassified independent contractors who are employees under the new **"ABC Test" of AB 5 (2019)** are not eligible for worker's compensation until July 1, 2020.

7. WHAT IF I AM TERMINATED OR FURLOUGHED?

Please be mindful a termination right now in California might be a wrongful termination based on Labor Code section 233 and 246, et seq. The current state stay at home order triggers a right to two weeks paid vacation under the new federal legislation.

Terminating employees rather than furloughing them is arguably designed to avoid paying sick time. this also assumes the company will not declare bankruptcy.

Labor Code § 246.5 states in relevant part: "An employer shall not deny an employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using accrued sick days, attempting to exercise the right to use accrued sick days, filing a complaint with the department or alleging a violation of this article, cooperating in an investigation or prosecution of an alleged violation of this article, or opposing any policy or practice or act that is prohibited by this article."

Furloughs are mandatory time off work without pay. Furloughs can be seen as a good solution because the company reduces its payroll expenses while keeping its workforce in place.

Generally, furloughs fall into two categories, partial-week and full-week.

Under California law, partial-week furloughs are permissible, but can be tricky. First, the salary reductions should be done in advance of the furlough to avoid being seen as a "deduction" from an exempt employee's salary for missed work days. Advance reductions in salaried employee pay to reflect long-term business needs does not destroy the salary basis for an employee's exemption. But day-to-day or short-term deductions from an employee's salary would. Along those lines, employers should consider implementing the changes for a substantial period of time, making it look like more of an adjustment to medium or long-term economic forecasts than a short-term reaction to transitory business conditions.

Second, companies must ensure that the reduced salary does not fall below the minimum monthly salary rate for exempt employees.

The California DLSE has determined that a properly executed week-long furlough of exempt employees will not result in those employee losing an exemption. However, the furlough must have the employee not performing any work during the defined workweek during the furlough. An employee who performs any work at all must be paid for the full week. Further, reasonable advance notice must be given to employees before the furlough begins. As with the partial-week furlough, the employee's salary cannot dip below the minimum salary threshold for exempt employees.

Finally, employers should ensure that the furlough is not too long and has a clearly defined return-to-work date, which could present a problem with coronavirus.

If the furlough is too long or if no return date is designated, it may be deemed a termination, entitling the employee to all final wages, including vacation. Any questions, please contact me, christina@chumphreylaw.com or 805.618.2924 office.

8. OTHER MEASURES YOU CAN TAKE TO REDUCE YOUR EXPENSES AND ALLEVIATE WAGE LOSS

Many lenders are allowing you to postpone payments on car loans and credit cards for as long as 90 days. Call your lender and let them know about your situation.

California Governor Gavin Newsom issued an executive order halting all evictions during the pandemic. The order is in effect through May 31, with the option of being extended, and halts evictions for both renters and homeowners. The order does not relieve a tenant from paying rent, and a landlord still has the ability to recover rent that is due. However, individuals cannot be evicted from their home for nonpayment.

The California order also requests that financial institutions halt foreclosure activity and protects against utility shutoffs for individuals affected by COVID-19.

Also, the Department of Housing and Urban Development (HUD) was ordered by President Trump on March 18 (the federal order) to suspend evictions and foreclosures for the next 60 days. The moratorium only applies to homeowners with mortgages insured by the Federal Housing Administration (FHA), a part of HUD that insures home loans made by FHA-approved lenders. The moratorium only covers FHA mortgages for single family homes.

The order not only prevents new foreclosure actions but also suspends all foreclosure actions currently in process.

Finally, the Federal Housing Finance Agency (FHFA) which oversees Fannie Mae, Freddie Mac, and the Federal Home Loan banks, is providing payment forbearance to borrowers impacted by the coronavirus for up to 12 months due to hardship. Under the plan, people who have suffered a loss of income can qualify to make reduced payments or be granted a complete pause in payments.

9. ADDITIONAL RESOURCES AVAILABLE

Additional protections are needed during this public health emergency. California Governor Gavin Newsom, members of the California Legislature, and the United States Congress have announced plans to introduce legislation that may further protect workers subject to an isolation or quarantine order by a health official from discrimination or retaliation, or offer better wage replacement for people who are in quarantine or caring for family members. Stay tuned to this post for ongoing updates.

For more information on COVID-19:

[Review of Families First Coronavirus Response Act](#)

[California COVID-19 Home Page](#)

[California Department of Public Health](#)

[California Labor & Workforce Development Agency](#) FAQs

[LWDA Summary Chart of Benefits](#)

[Employment Development Department Coronavirus FAQs](#)

[Department of Labor Standards Enforcement FAQs](#)

[Department of Fair Employment and Housing Regulations](#)

[Legal Aid at Work FAQs – English](#) – [Spanish](#) – [Chinese](#)

Please note that this document was drafted from a number of resources, including the California Employment Lawyers Association blog, resources from the California EDD site, and anecdotal information provided by other lawyers, including myself. It does not constitute legal advice but is meant to only provide as a reference guide, you should follow up with a lawyer or a state agency or your lender to make sure the information contained herein is up to date and accurate.