

# Sweeney Mason

LLP

## *Coronavirus (COVID-19) Update:*

### *Cal/OSHA Adopts New Emergency COVID-19 Standard*

The Department of Industrial Relations' (DIR) Occupational Safety and Health Standards Board unanimously adopted emergency temporary standards to protect workers from hazards related to COVID-19. The Office of Administrative Law has reviewed and approved the emergency standards. The emergency standards will be in effect for 180 days, but can be extended. It is anticipated that Cal/OSHA will use this time to create permanent regulations on this topic. We recommend that you consult with employment counsel to make sure that your policies and practices are in compliance with the new regulations.

The new standards apply to most workers in California who are not already covered by Cal/OSHA's Aerosol Transmissible Diseases standard and require employers to create a COVID-19 prevention program, investigate, track and respond to COVID-19 cases in the workplace, and provide free testing to workers in cases of outbreaks, among many other requirements.

The DIR has provided an invaluable series of FAQs, available [here](#). Other DIR resources relating to the new standards are available [here](#).

Written COVID-19 Prevention Plan.

Under the emergency standard, all businesses are required to create and implement a written COVID-19 Prevention Plan that addresses the following:

1. Implementing a system of communicating information to employees about COVID-19 prevention procedures, testing, symptoms and illnesses, including a system for employees to report exposures without fear of retaliation.
2. Identifying and evaluating hazards – screening employees for symptoms, identifying workplace conditions and practices that could result in potential exposure.

3. Investigating and responding to cases in the workplace – responding immediately to potential exposures by following steps to determine who may have been exposed, providing notice within one business day about potential exposures, and offering testing to workers who may have been exposed.
4. Correcting COVID-19 hazards – including correcting unsafe conditions and work practices as well as providing effective training and instruction.
5. Physical distancing – implementing procedures to ensure workers stay at least six feet apart from other people if possible.
6. Face coverings – providing face coverings and ensuring they are worn.
7. Adopting site-specific strategies such as changes to the workplace and work schedules and providing personal protective equipment to reduce exposure to the virus.
8. Implementing positive COVID-19 case and illness recording requirements and making the COVID-19 Prevention Plan accessible to employees and employee representatives.
9. Removing COVID-19 exposed workers and COVID-19 positive workers from the workplace for 10 days after exposure, provided the employee wears a face covering at all times, maintains physical distancing of at least six feet at the workplace through Day 14, AND there is no local health order that prescribes a longer quarantine period. As with other COVID measures, when regulations and guidelines conflict, employers are to adhere to the stricter order.
10. Implementing measures to protect pay and benefits for workers excluded from the workplace due to COVID-19 exposure or positive status.
11. Criteria for employees to return to work after recovering from COVID-19.
12. Requirements for providing free testing to employees and notifying public health departments of workplace outbreaks (three or more cases in a workplace in a 14-day period) and major outbreaks (20 or more cases within a 30-day period).
13. Specific requirements for infection prevention in employer-provided housing and transportation to and from work.

The written plan can be incorporated into your existing Injury and Illness Prevention Program (IIPP) or can be maintained as a separate document.

A sample plan is provided by the state and available [here](#).

#### Paid Time Off Requirement.

Of the new requirements, one of the most controversial, and potentially most onerous, is the mandate that employees who are excluded from work because they have tested positive or must quarantine due to possible COVID-19 exposure must continue to be paid while they are off work. The regulation provides that 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."

It is possible that this standard will be challenged, as it is unclear what authority, if any, Cal/OSHA has to mandate a paid time off requirement. It is also unclear how this requirement interacts with existing paid leave requirements, such as those provided by the Families First Coronavirus Response Act (FFCRA).

There are two potential exemptions to the "maintained earnings" requirement:

The requirement does not apply to any period of time during which the employee is unable to work for reasons other than protecting persons at the workplace from COVID-19 exposure;

The requirement does not apply where the employer can "demonstrate" that the COVID-19 exposure is not work-related. The regulation does not address what evidence will be required to satisfactorily make this demonstration, or indeed, to whom the demonstration must be made.

While some of the standards reflect public health orders, previous Cal/OSHA voluntary guidance, and new California state law (such as AB 685), employers should take immediate action to come into compliance with the new standards.

*Sweeney Mason LLP continues to monitor the rapidly evolving situation pertaining to the COVID-19 virus and resulting legal issues. We are finding that the laws and orders released by the Federal, State, County and Local governments are, in some cases, ambiguous, vague and/or contradictory, resulting in some confusion among a broad cross-section of our clients. At this juncture, and given the fast-paced changes to the applicable orders and mandates, as well as the ambiguities inherent in the orders there is no "one-size-fits-all" approach to COVID-19-related legal matters. As a result, contracts, employment issues, ongoing lawsuits and other matters impacted by the COVID-19 outbreak should be analyzed on a case-by-case basis and with the assistance of Sweeney Mason LLP.*

*Sweeney Mason LLP is in daily contact with governmental offices and various trade organizations to monitor the developments surrounding the COVID-19 outbreak. While much of our personnel continues to work remotely, Sweeney Mason LLP is fully operational and will continue to assist our clients and community with their legally related issues and concerns during this uncertain time.*

*For more information, please contact our employment team at 408-356-3000 or via email: Roger Mason at [rmason@smwb.com](mailto:rmason@smwb.com) or Rachael Brown at [reb@smwb.com](mailto:reb@smwb.com).*

*The following links may assist you in evaluating some of the issues you may have. Stay safe!*

**DOL Publications:**

[FFCRA FAQs](#)

[FFCRA Required Notice](#)

**IRS Guidelines:**

[FFCRA Tax Credits](#)

[Employee Retention Tax Credits Under CARES Act](#)

**SBA Guidelines:**

[PPP FAQs](#)

**CDC Guidelines:**

[Interim Guidance on Risk Assessment for Individuals with Possible COVID-19 Exposure](#)

[Interim Guidance for Businesses and Employers](#)

**Cal/OSHA:**

[Preparing Your Workplace for COVID-19](#)

[Emergency Temporary Standards](#)

[Emergency Temporary Standards FAQs](#)

**California:**

[Blueprint for a Safer Economy](#)

[EDD COVID-19 Overview](#)

[EDD COVID-19 FAQs](#)

**Santa Clara County:**

[Current Risk Reduction Order \(October 5\)](#)

[Current Guidance for Businesses](#)

[Social Distancing Protocol \(October 5\)](#)

[Public Health Department FAQs](#)

[Requirements for Businesses](#)

**San Jose:**

[Paid Sick Leave Ordinance](#)



The information provided in this publication is general in nature and is not intended to answer every question that may arise under different fact situations and should not be relied on in the place of professional advice in a given case. If you have specific questions, please contact Sweeney Mason LLP.

SWEENEY MASON LLP's philosophy is that by educating our clients, and other businesses, about their legal obligations, including changes in the law, we best serve our legal goal of minimizing or preventing expensive litigation.

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