

Sweeney Mason

LLP

Coronavirus (COVID-19) Update:

California Expands Workers' Compensation Protections

On May 6, 2020, Governor Gavin Newsom issued an executive order to expand workers' compensation benefits. The new order provides that if an employee contracts COVID-19, exposure is *presumed* to have arisen in the course and scope of the employee's work, therefore triggering workers' compensation benefits. The presumption applies if the employee can show each of the following criteria:

1. The employee tested positive for or was diagnosed with COVID-19 within fourteen days after a day that the employee performed work at his or her place of work, at the employer's direction;
2. The work was performed on or after March 19, 2020;
3. The employee's place of work was not the employee's home;
4. That any diagnosis under Part 1 was done by a California licensed physician *and* is confirmed by further testing within 30 days of the diagnosis.

If the employee can establish each of these conditions, a rebuttable presumption of workers' compensation coverage is created. An employer will be able to dispute the presumption but only with concrete evidence that the employee did not contract COVID-19 at work: a heavy burden to overcome.

The expanded workers' compensation benefits apply across all sectors and industries.

The executive order is retroactive to March 19, 2020 and expires 60 days from Wednesday, May 6, 2020.

Companies are strongly advised to implement a protocol based on OSHA's guidance for preparing a workplace for coronavirus. Failure to do so may be viewed as a failure to take all reasonable precautions to protect employees from coronavirus exposure, potentially triggering claims of serious and willful misconduct in the event an employee dies from COVID-19 and claims to have contracted the virus at work. The CDC also has issued helpful guidance.

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. For example, several Bay Area Cities impose their own emergency orders that mirror but in many cases are more stringent than the Statewide or County orders. 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.

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 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 or Rachael Brown at 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](#)

CDC Guidelines:

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

[Interim Guidance for Businesses and Employers](#)

OSHA:

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

California:

Stay at Home Order

EDD COVID-19 Overview

EDD COVID-19 FAQs

Santa Clara County:

Updated Shelter-in-Place

Social Distancing Protocol

Public Health Department FAQs on the Shelter in Place Order

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.

Sweeney Mason LLP
983 University Ave, Suite 104C | Los Gatos, CA 95032 US
408.356.3000
www.smwb.com