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Employer Guidance on Coronavirus Management

As experts suggest it is likely that the coronavirus (COVID-19) will continue to spread, employers should plan ahead for dealing with it at the workplace. While investigations to learn more about the virus are ongoing, workers and employers should review their health and safety procedures now to help prevent exposure to the virus and deal with it if it impacts the workplace.

Cal/OSHA Guidance Concerning Health and Safety Measures

The most recent guidance from Cal/OSHA recommends employers follow the recommendations from the Centers for Disease Control and Prevention (CDC). These guidelines include infection prevention measures such as:

- Actively encouraging sick employees to stay home;
- Sending employees with acute respiratory illness symptoms home immediately;
- Providing information and training to employees on:
 - o Cough and sneeze etiquette;
 - o Hand hygiene;
 - o Avoiding close contact with sick persons;
 - o Avoiding touching eyes, nose, and mouth with unwashed hands; and
 - o Avoiding sharing personal items with co-workers (i.e.; dishes, cups, utensils, towels).
- Providing tissues, no-touch disposal trash cans and hand sanitizer for use by employees;
- Performing routine environmental cleaning of shared workplace equipment and furniture (disinfection beyond routine cleaning is not recommended); and
- Advising employees to check CDC's Traveler's Health Notices prior to travel.

The CDC guidelines also contain recommendations for creating an infectious disease outbreak response plan to be followed in the event of an outbreak. These response plans include one or more of the following:

- If feasible, allowing flexible worksites, telecommuting and flexible work hours to increase physical distance among employees;
- Using other methods of minimizing exposure between employees, and between employees and the public; and
- Postponing or canceling large work-related meetings or events.

California EDD Guidance Concerning Time Away from Work

In addition to safety and health concerns, many employers and workers are concerned about missing work due to potential quarantine or illness. The California

Employment Development Department (EDD) has provided the following information to employers:

For Workers

Sick or Quarantined: If you are unable to work due to having or being exposed to COVID-19 (certified by a medical professional), you can file a Disability Insurance (DI) claim. DI provides short-term benefit payments to eligible workers who have a full or partial loss of wages due to a non-work-related illness.

Caregiving: If you are unable to work because you are caring for an ill or quarantined family member with COVID-19 (certified by a medical professional), you can file a Paid Family Leave (PFL) claim. PFL provides up to six weeks of benefit payments to eligible workers who have a full or partial loss of wages because they need time off work to care for a seriously ill family member.

Reduced Work Hours: If your employer has reduced your hours or shut down operations due to COVID-19, you can file an Unemployment Insurance (UI) claim. UI provides partial wage replacement benefit payments to workers who lose their job or have their hours reduced, through no fault of their own. Workers who are temporarily unemployed due to COVID-19 and expected to return to work with their employer within a few weeks are not required to actively seek work each week. However, they must remain able and available and ready to work during their unemployment for each week of benefits claimed and meet all other eligibility criteria.

For Employers

Reduced Work Hours: Employers experiencing a slowdown in their businesses or services as a result of the coronavirus impact on the economy may apply for the UI Work Sharing Program. This program allows employers to seek an alternative to layoffs — retaining their trained employees by reducing their hours and wages that can be partially offset with UI benefits. Workers of employers who are approved to participate in the Work Sharing Program receive the percentage of their weekly UI benefit amount based on the percentage of hours and wages reduced, not to exceed 60 percent.

Potential Closure or Layoffs: Employers planning a closure or major layoffs as a result of the coronavirus can get help through the Rapid Response program. Rapid Response teams will meet with you to discuss your needs, help avert potential layoffs, and provide immediate on-site services to assist workers facing job losses. Additionally, employers covered by the Worker Adjustment and Retraining Notification (WARN) Act will need to consult experience labor counsel to decide what, if any, actions that may need to take as a result of a shutdown.

Tax Assistance: Employers experiencing a hardship as a result of COVID-19 may request up to a 60-day extension of time from the EDD to file their state payroll reports and/or deposit state payroll taxes without penalty or interest. A written request for extension must be received within 60 days from the original delinquent date of the payment or return.

California Labor Commissioner Guidance Concerning Paid Sick Leave

The Department of Labor Standards Enforcement (“DLSE”) has published its responses to Frequently Asked Questions (“FAQ”) regarding Coronavirus and paid sick leave. The following is a pertinent excerpt:

1. Can an employee use California Paid Sick Leave due to COVID-19 illness?

Yes. If the employee has paid sick leave available, the employer must provide such leave and compensate the employee under California paid sick leave laws.

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.

2. If an employee exhausts sick leave, can other paid leave be used?

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.

3. Can an employer require a worker who is quarantined to exhaust paid sick leave?

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 per day. The determination of how much paid sick leave will be used per workday is up to the employee.

4. Can an employer require a worker to provide information about recent travel to countries considered to be high-risk for exposure to the coronavirus?

Yes. Employers can request that employees inform them if they are planning or have traveled to countries considered by the Centers for Disease Control and Prevention to be high-risk areas for exposure to the coronavirus. However, employees have a right to medical privacy, so the employer cannot inquire into areas of medical privacy.

5. Is an employee entitled to compensation for reporting to work and being sent home?

Yes. Generally, if an employee reports to their regularly scheduled shift but is given less than half their regular work hours or is sent home, the employee must be compensated for at least two hours or no more than four hours of reporting time pay.

For example, a worker who reports to work for an eight-hour shift and only works for one hour must receive four hours of pay, one for the hour worked and three as reporting time pay so that the worker receives pay for at least half of the expected eight-

hour shift. An exception to reporting time pay is where operations cannot commence or continued when recommended by civil authorities.

6. If an employee is exempt, are they entitled to a full week's salary for work interruptions due to a shutdown of operations?

Regulations require that an exempt employee (paid at least the minimum required salary) who performs any work during a week must be paid their full weekly salary, if they do not work the full week because the employer failed to make work available.

An exempt employee who performs no work at all during a week may have their weekly salary reduced.

Deductions from salary for absences of less than a full day for personal reasons or for sickness are not permitted. If an exempt employee works any portion of a day, there can be no deduction from salary for a partial day absence for personal or medical reasons.

Regulations allow partial day deductions from an employee's sick leave bank so that the employee is paid for their sick time by using their accrued sick leave. If an exempt employee has not yet accrued any sick leave or has exhausted all of their sick leave balance, there can be no salary deduction for a partial day absence.

Deductions from salary may also be made if the exempt employee is absent from work for a full day or more for personal reasons other than sickness and accident, so long as work was available for the employee, had they chosen to work.

7. What protections does an employee have if they suffer retaliation for using their paid sick leave?

The Labor Commissioner's Office enforces several laws that protect workers from retaliation if they suffer adverse action for exercising their labor rights, such as using paid sick leave. Additional information on how to file a retaliation or discrimination complaint is posted online. The DLSE's FAQ on the Coronavirus and paid sick leave can also be found at the following URL: <https://www.dir.ca.gov/dlse/2019-Novel-Coronavirus.htm>.

What This Means for Employers:

Given the evolving nature of this unprecedented health emergency, employers and employees will need to work together to ensure that the spread of COVID-19 is as low as possible. Agricultural employers with questions regarding paid sick leave or other issues related to COVID-19 should contact a Barsamian & Moody attorney to discuss.

The goal of this article is to provide employers with current labor and employment law information. The contents should neither be interpreted as, nor construed as legal advice or opinion. The reader should consult with Barsamian & Moody at (559) 248-2360 for individual responses to questions or concerns regarding any given situation.