

**MPCC Roundtable
June 23, 2020 TPO Update**



For questions or additional information regarding the below update, please contact Michaelle Stanford, PHR-ca, M.A. at michaelles@tpohr.com. **TPO Note:** *As a reminder, these updates are provided for informational purposes only. For unique situations to your business, please consult with your Human Resource provider or employment expert.*

Continuing the Story: As Monterey County Re-opens What if there is another “Stay at Home” order?

Whether businesses remain open or “worst case”, there is a re-instatement of “Stay at Home”, what are the implications to your leave policies when employees need to care for themselves or others?

Contained in this business roundtable update is a list of applicable policies and links to more information:

ALL EMPLOYERS: California Paid Sick Leave (PSL) applies to all employees (full, part-time, temporary, season and even out of state employees when they work in California). Allows employees to use up to 24 hours or 3 days per year. <https://www.dir.ca.gov/dlse/2019-Novel-Coronavirus.htm>

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

ALL EMPLOYERS: Workers Compensation applies to all employees for when a reportable illness or injury occurs. Provide the “Worker’s Compensation Claim Form (DWC-1) to the employee immediately, or at least within one day of the occurrence. Contact your insurance carrier as soon as you become aware of the illness or injury. <https://www.dir.ca.gov/dwc/fileaclaim.htm>

EMPLOYERS WITH < 500 EMPLOYEES:

- **FFCRA Emergency Paid Sick Leave (EPSL)** generally applies to private sector (and certain public sector) full, part-time, temporary and seasonal employees. Provides up to two weeks (80 hours, or a part-time employee's two week equivalent). **Remember**, for employees who meet one of the EPSL qualifying reasons, you may not require them to first exhaust other sick leave policy benefits. [https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave#:~:text=Two%20weeks%20\(up%20to%2080,and%20seeking%20a%20medical%20diagnosis%3B](https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave#:~:text=Two%20weeks%20(up%20to%2080,and%20seeking%20a%20medical%20diagnosis%3B)

46. If I take paid sick leave under the Emergency Paid Sick Leave Act, does that count against other types of paid sick leave to which I am entitled under State or local law, or my employer's policy? <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions#39>

No. Paid sick leave under the Emergency Paid Sick Leave Act is in addition to other leave provided under Federal, State, or local law; an applicable collective bargaining agreement; or your employer's existing company policy.

- **FFCRA Expanded Family Leave (EFMLA)** extends to employees who have been employed for at least 30 days prior to their leave request may be eligible for an additional 10 weeks of partially paid leave.

EMPLOYERS WITH 5 OR MORE EMPLOYEES: **CA Pregnancy Disability Leave** applies to female employees who are disabled by pregnancy and unable to work or perform any one or more of the essential functions of her job. Benefits extend intermittent leave and transfers to available alternate positions. <https://www3.arb.ca.gov/personnel/posters/pregnancydisabilityleavenotices.pdf>

EMPLOYERS WITH 20-49 EMPLOYEES: **New Parent Leave ACT (NPLA)** is available to eligible employees (with more than 12 months of service and who worked at least 1,250 hours during the 12 months immediately prior to the date the leave begins to care for the employee's child (bonding) after birth, adoption or foster care.

EMPLOYERS WITH 50+: The Federal Family Medical Leave (FMLA) & California Family Rights Act (CFRA) are two interlocking regulations that were set up to allow men and women up to 12 weeks "unpaid" time a year away from work to care for themselves, or their family members when faced with a "serious health condition" or to bond with a newborn, or newly adopted child. Generally, employees are guaranteed a return to their job or an equivalent position with equivalent benefits, pay, health insurance and other terms and conditions of employment.

The **Department of Fair Employment & Housing (DFEH)** provides an excellent resource outlining the differences of eligibility requirements and benefits across PDL, CFRA, NPLA and FMLA requirements and obligations. <https://www.dfeh.ca.gov/employment/pdl-cfra-npla-fmla/>