

## April 2020 Legal HR Updates

### 30-Second Summaries

#### General/Federal

The federal government continued to rollout additional information related to the Coronavirus:

##### **Centers for Disease Control (CDC)**

- The CDC released interim guidance on Implementing Safety Practices for Critical Infrastructure Workers.
- Additional information can be found [here](#).

##### **Occupational Safety and Health Administration (OSHA)**

- OSHA released interim guidance on [Preparing Workplaces for COVID-19](#), [Preventing Worker Exposure](#), and [One-Sheet Regarding Worker Exposure Risk](#).
- Good faith efforts may help with safety violations under COVID-19.
- Additional information can be found [here](#).

##### **Equal Employment Opportunity Commission (EEOC)**

- Employers may take temperature of employees and ask if they have symptoms, and refuse entry to employees who have symptoms.
- Employers can inform employees if someone in their organization has (or has been exposed to) the Coronavirus, but cannot share the name of the employee with staff, as that could violate the Americans with Disabilities Act.
- Employers may not target individuals over the age of 65 or with underlying medical conditions, as those actions would be considered discriminatory.
- Reasonable accommodations and interactive processes are still required.
- Additional information can be found [here](#).

##### **Families First Coronavirus Response Act (FFCRA) Documentation**

- The following information is required if an employee requests extended FMLA leave, or paid sick leave: (1) name, (2) dates of leave request, (3) qualifying reason, and (4) oral or written statement that employee is unable to work due to qualifying reason.
- Additional information can be found [here](#).

##### **CARES Act (SBA Loan)**

- On April 16, 2020, the CARES Act ran out of funds – additional funding from the federal government was provided.
- Additional information can be found [here](#).

#### State

Many states have authorized a Pandemic Unemployment Assistance (PUA) program in their state. This expands unemployment to workers who typically would not qualify, such as gig workers, self-employed, independent contractors, and even employees of religious organizations. Each state has a specific agreement with the federal government regarding PUA benefits, so check your local unemployment office to determine if this is offered in your state.

The following states had the following important updates:

#### California

Food Sector Employees – Effective April 16, 2020, food service employees must be provided up to two weeks of Supplemental Paid Sick Leave. More info [here](#).

Paid Leave Expansions – The [City of Los Angeles](#), [San Jose](#), and [San Francisco](#) has required new sick leave laws related to COVID-19.

#### Colorado

Colorado Health Emergency Leave with Pay (HELP) - Amended to include additional industries. More info [here](#).

Colorado Overtime and Minimum Pay Standards Order – Minimum threshold increased for salaried employees. More info [here](#).

#### Connecticut

Essential Workers – The Department of Economic and Community Development mandated new workplace rules and retail store rules regarding the use of face masks. More info [here](#).

#### Indiana

Employment of Minors – Eligible hours for work were adjusted for minors and must pay minimum wage. More info [here](#).

#### New Jersey

Updates to Mini-WARN Act – Pending amendments to the NJ WARN act are postponed until 90 days after the state of emergency has ended. More info [here](#).

Paid Leave – Effective April 14, 2020, the New Jersey Family Leave Act includes leave related to communicable disease, and additional leave to care for a child where school is closed or care for a family member who is ill. More info [here](#).

#### New York

Paid Sick Leave – New York Paid Sick Leave goes into effect on September 20, 2020 and includes different levels of leave based on number of employees and net income. More info [here](#).

Essential Workers – Effective April 15, 2020, employees at essential workplaces must wear face coverings when interacting with the public. More info [here](#).

#### Pennsylvania

Safety Measures for COVID-19 – Effective April 19, 2020, all businesses must comply with cleaning requirements, and have a compliant plan in place should there be a probable or confirmed COVID-19 case in the workplace. More info [here](#).

Philadelphia Fair Workweek Law -Effective April 1, 2020, covered employers in the service, retail, and hospitality industries, are required to provide workers with a predictable work scheduled. More info [here](#).

## Virginia

Restrictions on Non-Essential Businesses – Retail establishments which are non-essential must limit all in-person shopping to no more than 10 customers at a time and comply with social distancing measures. Stores that cannot comply must close. More info [here](#).

Anti-Discrimination – Effective July 1, 2020, the Virginia Values Act extends anti-discrimination protections to the LGBTQ community. More info [here](#).

Non-Competes – Effective July 1, 2020, it will be illegal for employers to require “low-wage” workers to sign non-competes. More info [here](#).

Workers Misclassification – Effective July 1, 2020, individuals misclassified as independent contractors may file civil actions against the employer. Effective January 1, 2021, employers who misclassify workers may be subject to civil penalties starting at \$1,000 for the first offense. More info [here](#).

Wage Theft – If an employee can prove their employer engaged in wage theft, the court may award the employee reasonable attorney fees, as well as triple the amount of wages due. More info [here](#).

Right to Work – Virginia continues to be a Right to Work state as decided by the Virginia Supreme Court. More info [here](#).

## Washington

“High Risk” Employees – Effective April 13, 2020 through June 12, 2020, employers must (1) look for alternative work assignments for high-risk workers, (2) permit said workers to use any available paid time off, (3) maintain health insurance benefits once leave has been exhausted, and (4) refrain from taking any adverse employment actions against these employees. More info [here](#).

## **Wisconsin**

Providing Employee Files – Employers are not bound to provide copies of personnel files to employees within seven business days during the public health emergency declaration. More info [here](#).

## **Nuts and Bolts**

### General/Federal

#### **Centers for Disease Control (CDC)**

##### **What happened?**

The CDC issued additional guidance for critical infrastructure workers.

##### **What are the details?**

Employers should pre-screen staff before they come to work for a fever and/or any symptoms, encourage workers to self-monitor and report illnesses, wear a mask, maintain social distance, and disinfect/clean workspaces.

## What do employers need to do?

Regularly review the CDC guidelines and implement safety measures as required.

## Resources

<https://www.cdc.gov/coronavirus/2019-ncov/community/critical-workers/implementing-safety-practices.html>

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## Occupational Safety and Health Administration (OSHA)

### What happened?

OSHA released additional guidance related to COVID-19 in the workplace.

### What are the details?

OSHA provided guidance on how to prepare workplaces for COVID-19, depending on their risk level, and provided a one-sheet to rate worker exposure risk to COVID-19.

- Very High Risk – Healthcare workers and laboratory personnel with regular contact with COVID-19 positive patients.
- High Risk – Healthcare delivery and support staff, medical transport workers, who may have contact with COVID-19 positive individuals.
- Medium Risk – Frequent and/or close contact (within six feet) with individuals who are COVID-19 positive.
- Low Risk – Workers who can maintain at least six feet distance from general public and minimal contact with public and other co-workers.

The guidance also includes details related to respiratory protection for healthcare workers and enforcement standards.

General practices for safety were also issued by OSHA:

- Frequently wash your hands with soap and water for at least 20 seconds.
- If soap and running water are not available, use an alcohol-based hand rub that contains at least 60% alcohol.
- Avoid touching your eyes, nose, or mouth with unwashed hands.
- Avoid close contact with people who are sick.

## What do employers need to do?

Review the links below to ensure compliance with OSHA requirements.

## Resources

- [Guidance on Preparing Workplaces for COVID-19](#)
- [Temporary Enforcement Guidance - Healthcare Respiratory Protection Annual Fit-Testing for N95 Filtering Facepieces During the COVID-19 Outbreak](#)

- [Enforcement Guidance for Respiratory Protection and the N95 Shortage Due to the Coronavirus Disease 2019 \(COVID-19\) Pandemic](#)
- [Enforcement Guidance for Use of Respiratory Protection Equipment Certified under Standards of Other Countries During the Coronavirus Disease 2019 \(COVID-19\) Pandemic](#)
- [OSHA alert on preventing worker exposure to coronavirus](#)
- [One-sheet regarding Worker Exposure Risk to COVID-19](#)

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## **Equal Employment Opportunity Commission (EEOC)**

### **What happened?**

The EEOC issued additional guidance for COVID-19 and the Americans with Disabilities Act (ADA), Rehabilitation Act, and other Equal Employment Opportunity (EEO) laws.

### **What are the details?**

These laws continue to apply during this crisis with the understanding that guidance from public health authorities may change as the pandemic evolves.

#### *Americans with Disabilities Act and Confidentiality*

- An employer may ask employees if they are exhibiting symptoms related to COVID-19 and take the employee's temperature. These results may be logged and all documents must be filed in a confidential medical record.
- Employers may currently take temperatures of employees without fear of violation of the law based on current CDC and state/local health authorities.
- Employers may require employees with symptoms to stay home and require a doctor's note before the employee can return to work.

#### *Hiring and Onboarding*

- Applicants may be screened for COVID-19 (including asking questions and taking temperature) if it is consistently done for all applicants. Employer may also delay hiring of an employee due to COVID-19 symptoms or withdraw the offer.
- Employer may not decide to withdraw or postpone the start date of an applicant due to the individual's age or pregnancy.

#### *Reasonable Accommodation*

- Employers are still required to provide reasonable accommodations for individuals with disabilities, but that accommodation may differ if the employee is telecommuting. Employers are required to follow the interactive process.
- The current pandemic situation may change whether an accommodation produces an undue hardship on the employer and all requests should be reviewed thoroughly.

#### *Harassment*

- Anti-harassment laws still apply.

### *Furloughs and Layoffs*

- Special rules may apply if offering a severance package and waiver of discrimination claims against the employer.

### *Return to Work*

- COVID-19 provides a “direct threat” according to guidance from the CDC. As such, employers may screen employees before they return to work if it is completed for all staff, regardless of age, gender, race, or other protected class.
- Some employees may need reasonable accommodations for Personal Protective Equipment.

### **What do employers need to do?**

Maintain compliance with the laws and regulations and reach out to your HR provider with questions.

### **Resources**

[https://www.eeoc.gov/eeoc/newsroom/wysk/wysk\\_ada\\_rehabilitaion\\_act\\_coronavirus.cfm?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=)

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### **Families First Coronavirus Response Act (FFCRA)**

#### **What happened?**

The Department of Labor and IRS released FAQs related to documentation requirements under the FFCRA. Documentation may be required to be reviewed by the federal government when leave is provided under the FFCRA. It is important for an employer to maintain documentation related to the applicable leave to ensure compliance with the regulations.

#### **What are the details?**

An employee must provide the following information if requesting leave:

1. Name
2. Dates of leave
3. Qualifying Reason
4. Oral or written statement that employee is unable to work due to qualifying reason

Depending on the reason for the leave, additional documentation is required:

- Employee subject to federal, state, or local quarantine or isolation order: The name of the governmental entity that issued the order
- Healthcare provider advised employee to self-quarantine: The name of the healthcare provider
- Employee caring for individual who was told to self-quarantine or is subject to governmental quarantine order: Either name of the healthcare provider or name of governmental entity that issued the order
- To care for a child: Name of the child, name of the school or place of care, representation that no other suitable person will be caring for child

## **What do employers need to do?**

Ensure strict compliance is maintained with respect to the documentation requested and work with your HR provider should a need for leave arise.

## **Resources**

[https://www.fmlainsights.com/managing-the-notice-and-documentation-requirements-under-the-new-paid-sick-and-fmla-leave-law/?utm\\_source=Jeff+Nowak++FMLA+Insights&utm\\_campaign=01c2a0fda1-RSS\\_EMAIL\\_CAMPAIGN&utm\\_medium=email&utm\\_term=0\\_9098bf1ba8-01c2a0fda1-70495517](https://www.fmlainsights.com/managing-the-notice-and-documentation-requirements-under-the-new-paid-sick-and-fmla-leave-law/?utm_source=Jeff+Nowak++FMLA+Insights&utm_campaign=01c2a0fda1-RSS_EMAIL_CAMPAIGN&utm_medium=email&utm_term=0_9098bf1ba8-01c2a0fda1-70495517)

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## **CARES Act (SBA Loan)**

### **What happened?**

The Paycheck Protection Program ran out of funds and cannot accept any additional applications at this time.

### **What are the details?**

The SBA posted this on their website: "The SBA is currently unable to accept new applications for the Paycheck Protection Program based on available appropriations funding."

### **What do employers need to do?**

Wait for Congress to take additional action – you may also contact your congressional representative to encourage action is taken.

## **Resources**

<https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp>

## **California**

### **Supplemental Paid Sick Leave for Food Sector Employees**

### **What happened?**

On April 16, 2020, an executive order was signed which requires food service employers with 500 or more employees to provide at least two weeks of supplemental paid sick leave (SPSL).

### **What are the details?**

This order covers all hiring entities that have 500 or more food sector workers nationwide. The order does state that the food sector workers are those individuals who are listed as exempt from the stay-at-home order. Employers must provide SPSL to any employee who is unable to work because they are (1)

subject to a quarantine or isolation order related to COVID-19, (2) advised by healthcare provider to self-quarantine, or (3) prohibited from working at the employer due to health concerns related to COVID-19.

#### *Calculating SPSL*

- Full-Time Employees: If a food sector worker works at least 40 hours/week, that individual should be provided 80 hours of SPSL.
- Part-Time Employees: If a food sector worker works less than 40 hours/week, that individual should receive twice their weekly hourly equivalent of SPSL. For example, someone who works 20 hours/week should be allowed 40 hours of SPSL.
- Varying Schedule Employees: If an employee does not work a normal schedule, they should receive 14 times the average number of hours worked each day for the preceding six months.

SPSL must be made available immediately for anyone who requests it.

If employers currently provide a paid benefit at least equal to the amount listed above, the employer does not need to provide SPSL. However, employers may not require an employee to exhaust any other leave prior to using SPSL.

#### *Payments*

Payment of SPSL is due on the next regularly scheduled pay date.

The payment to staff shall be calculated with the highest of the following: (1) the regular rate of pay for the previous pay period, (2) the state minimum wage, or (3) the local minimum wage.

#### *Hand Washing*

All food facility employees must be permitted to wash their hands at least every 30 minutes.

#### **What do employers need to do?**

Post a copy of the required notice, which will be provided by the California Labor Commissioner and is available [here](#).

All records of payments under SPSL must be kept for at least three years.

#### **Resources**

<https://www.seyfarth.com/news-insights/new-paid-supplemental-sick-leave-for-california-food-sector-employers.html>

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#### **Supplemental Paid Sick Leave – City of Los Angeles**

##### **Applies to:**

Businesses who operate within the City of Los Angeles.

Employers with either (1) 500 or more employees within the City of Los Angeles, or (2) 2,000 or more employees within the United States.

### **What happened?**

The mayor superseded an ordinance established by the City Council to require supplemental paid sick leave to employees who perform work within the City of Los Angeles. Any staff who have been employed by the same employer from February 3, 2020 through March 4, 2020 is eligible for this leave.

### **What are the details?**

Effective April 10, 2020, covered employers shall provide 80 hours of Supplemental Paid Sick Leave to full-time employees. Part-time employees (work less than 40 hours/week) shall receive the average number of hours worked for a two-week period between February 3, 2020 and March 4, 2020.

Time off must be provided for the following covered reasons:

- 1) A “public health official or health provider requires or recommends the employee isolate or self-quarantine” due to COVID-19;
- 2) If an employee takes time off and is at least 65 years old, or has an underlying health condition that puts them at risk;
- 3) The employee needs to care for a family member who is not sick, but has been recommended or required to self-quarantine; and
- 4) The employee needs to provide care for a family member whose senior care provider, school, or childcare provider is closed and no other care is available.

Payments are capped at \$511 per day and \$5,110 in the aggregate.

Employees can submit a request either orally or in writing. The employer is prohibited from requiring a doctor’s note for use of supplemental paid sick leave.

### *Exemptions*

The following industries are exempt from this Public Order:

- Emergency and Health Services Personnel
- Critical Parcel Delivery – If deemed as essential emergency service.
- Generous Leave – Any employer that provides a minimum of 160 hours of paid leave annually.
- New Business – All new businesses, except for construction or film producers, which opened within the city limits between April 4, 2019 and March 4, 2020 are exempt from this Public Order. In addition, if any business relocated to the City during this same time is also exempt.
- Government – Government employees are exempt from this Public Order.
- Closed Businesses – Any business or organization closed for at least 14 days due to the city official’s emergency order or has provided at least 14 days of paid leave.
- Collective Bargaining – Current agreements are exempt only if they already include COVID-19 related sick leave provisions.

In addition, if an employer has provided paid time off for one of the approved reasons listed above, they can reduce their liability accordingly.



This Order shall remain in effect until two calendar weeks (14 days) after the expiration of the COVID-19 local emergency period.

### **What do employers need to do?**

Ensure workers are provided paid sick leave in compliance with the above and notified of their rights under this Order.

#### **Supplemental Paid Sick Leave Order:**

<https://www.lamayor.org/sites/g/files/wph446/f/page/file/SUPPLEMENTALPAIDSICKLEAVE.pdf>

#### **Articles:**

[https://www.californiaworkplacelawblog.com/2020/04/articles/disability-and-leave/paid-sick-leave/city-of-los-angeles-supplemental-covid-19-paid-sick-leave-will-proceed-but-as-superseded-by-the-mayors-public-order/?utm\\_source=Jackson+Lewis+-+California+Workplace+Law+Blog&utm\\_campaign=41d079931a-EMAIL\\_CAMPAIGN\\_2020\\_04\\_08\\_11\\_18&utm\\_medium=email&utm\\_term=0\\_d14f32d342-41d079931a-77869325](https://www.californiaworkplacelawblog.com/2020/04/articles/disability-and-leave/paid-sick-leave/city-of-los-angeles-supplemental-covid-19-paid-sick-leave-will-proceed-but-as-superseded-by-the-mayors-public-order/?utm_source=Jackson+Lewis+-+California+Workplace+Law+Blog&utm_campaign=41d079931a-EMAIL_CAMPAIGN_2020_04_08_11_18&utm_medium=email&utm_term=0_d14f32d342-41d079931a-77869325)

[https://www.laboremploymentlawblog.com/2020/04/articles/coronavirus/los-angeles-mandates-supplemental-ffcra/?utm\\_medium=email&utm\\_campaign=Labor%20and%20Employment%20Law%20Blog%20copy&utm\\_content=Labor%20and%20Employment%20Law%20Blog%20copy+CID\\_b668f325a05d1132bf9ccb33f1a7c5db&utm\\_source>Create%20Send%20campaigns&utm\\_term=The%20City%20of%20Los%20Angels%20Mandates%20Supplemental%20Paid%20Sick%20Leave%20Effective%20Immediately](https://www.laboremploymentlawblog.com/2020/04/articles/coronavirus/los-angeles-mandates-supplemental-ffcra/?utm_medium=email&utm_campaign=Labor%20and%20Employment%20Law%20Blog%20copy&utm_content=Labor%20and%20Employment%20Law%20Blog%20copy+CID_b668f325a05d1132bf9ccb33f1a7c5db&utm_source>Create%20Send%20campaigns&utm_term=The%20City%20of%20Los%20Angels%20Mandates%20Supplemental%20Paid%20Sick%20Leave%20Effective%20Immediately)

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### **Supplemental Paid Sick Leave – San Jose**

#### **What happened?**

Effective April 7, 2020, San Jose passed additional paid sick leave requirements related to COVID-19 for all business who are (1) subject to the Business License Tax required by Chapter 4.76 of the Municipal Code or maintains a facility within City boundaries and (2) employer is not required to provide paid sick leave benefits under the federal Emergency Paid Sick Leave Act.

#### **What are the details?**

##### ***Employee Eligibility***

An employee must (1) have worked for the employer at least two hours within the City of San Jose and (2) leave their place of residence to perform “essential work” as outlined under the “shelter in place” order.

Employees may request leave if:

1. Employee is subject to federal, state, or local quarantine or isolation order related to COVID-19
2. Employee has been advised by a healthcare provider to self-quarantine
3. Employee is experiencing COVID-19 symptoms and seeking a medical diagnosis

4. Caring for an individual who is subject to 1, 2, or 3
5. Employee is caring for a family member whose school or place of care has been closed due to public health emergency
6. Employee experiencing other substantially similar condition specified by Secretary of Health and Human Services

*Payment of Leave*

- For reasons 1-3, employees are paid at their regular rate, up to \$511 per day.
- For reasons 4-6, employees are paid at two-thirds of their regular rate, up to \$200 per day.

*Number of Hours*

- Staff who work at least 40 hours/week are eligible for 80 hours of paid sick leave.
- Part-time employees (anyone who works less than 40 hours/week) are eligible based on the average hours worked over a two-week period. This is calculated based on the hours worked between October 8, 2019 and April 7, 2020.
- If a part-time employee worked less than six months, the average number of hours expected at date of hire will be used.
- Other paid leave may be used to reduce the number of hours required under San Jose paid sick leave.

*Recordkeeping*

Employers should keep the following records:

- Name of employee
- Dates for requested leave
- Reason for leave
- Statement from employee of inability to work due to reason

**What do employers need to do?**

Comply with above regulations.

Post for all staff (share electronically) the required [poster](#).

**Resources**

<https://www.fisherphillips.com/resources-alerts-san-francisco-and-san-jose-provide-emergency>

<https://www.sanjoseca.gov/home/showdocument?id=56820>

<https://www.sanjoseca.gov/home/showdocument?id=56818>

<https://www.sanjoseca.gov/home/showdocument?id=56872>

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## Supplemental Paid Sick Leave – San Francisco

### What happened?

On April 17, 2020, San Francisco passed the Public Health Emergency Leave Ordinance (SF PHELO), which provides eligible employees up to 80 hours of supplemental paid leave related to COVID-19.

### Applies to:

Private employers with 500 or more employees worldwide. This is determined by the average number of employees per pay period in calendar year 2019.

### What are the details?

Any employee, including part-time and temporary employees, who perform work within the city limits of San Francisco. Employees may take time off if unable to work or telework due to caring for a family member whose school or place of care was closed or whose childcare provider is unavailable.

Employee may request leave orally or in writing.

### *Eligibility*

Employee may take PHELO when:

1. Employee is subject to federal, state, or local quarantine or isolation order related to COVID-19
2. Employee has been advised by a healthcare provider to self-quarantine
3. Employee is experiencing COVID-19 symptoms, and seeking a medical diagnosis
4. Caring for a family member who is subject to 1, 2, or 3
5. Employee is caring for a family member whose school or place of care has been closed due to public health emergency
6. Employee experiencing other substantially similar condition specified by the local health officer or Secretary of Health and Human Services

### *Amount of Leave*

- Full-time employees (40 hour/week) are entitled to 80 hours of PHELO
- Part-time employees (less than 40 hours/week) are entitled to time off equivalent to the average number of hours worked in the six months prior to February 25, 2020, including any paid leave taken. If hired after February 25, 2020, the leave will equate to the average number of hours worked over a two-week period from the hire date to the date of leave, including any paid leave taken.
- The amount of leave may be reduced by all other COVID-19 related leave (ex. supplemental paid sick leave for food sector employees). If staff are required to have a total of 80 hours of PHELO and they have already been granted 40 hours COVID leave under a previous law, the company need only offer 40 hours of PHELO to eligible staff.
- Employees may use PHELO for scheduled overtime hours (paid at the regular rate of pay), but cannot use time above the average number of hours worked over the previous six months, ending on February 25, 2020.

### *Calculating Pay*

- The employee will be compensated based on their regular rate of pay.

- Tips are excluded.

*Exceptions*

- Private sector employees at the San Francisco International Airport
- Private sector employees who work at businesses located in the federal enclaves in San Francisco
- Independent contractors
- Collective bargaining agreements (CBA), if the CBA waives the requirements in clear and unambiguous terms
- Healthcare workers and emergency responders may be exempt from most of these requirements. However, these employees may use this leave if they are unable to telework due to (1) healthcare provider advising self-quarantine or (2) the employee is experiencing symptoms and seeking a medical diagnosis and do not meet the CDC guidelines for return to work.

**What do employers need to do?**

Comply with the above rules.

Post the required notice once released.

**Resources**

<https://www.fisherphillips.com/resources-alerts-san-francisco-and-san-jose-provide-emergency>

<https://www.littler.com/publication-press/publication/san-francisco-mayor-signs-public-health-emergency-leave-ordinance-and>

[https://sfgov.org/olse/sites/default/files/Public%20Health%20Emergency%20Leave%20-%20FINAL\\_0.pdf](https://sfgov.org/olse/sites/default/files/Public%20Health%20Emergency%20Leave%20-%20FINAL_0.pdf)

Colorado

**Overtime and Minimum Pay Standards Order**

**What happened?**

Colorado passed new minimum wage requirements effective March 1, 2020 and July 1, 2020 (new exempt salaries).

**What are the details?**

- Minimum salary threshold to be exempt has increased to \$35,568 beginning July 1, 2020.
- “Owners” who manage a business and have 20% ownership do not need to receive a salary to be exempt.
- The highest-ranked and highest-paid employee of a non-profit is considered exempt if the employee meets the minimum salary requirements listed above.

## **What do employers need to do?**

Review all positions and wages to determine eligibility/coverage and adjust as necessary. Contact your HR Manager if you need further assistance.

## **Resources**

<https://www.colorado.gov/pacific/cdle/news/labor-department-adopts-new-colorado-overtime-and-minimum-pay-standards-rule>

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## **Colorado Health Emergency Leave with Pay (HELP)**

### **What happened?**

On March 11, 2020, HELP was passed to provide paid leave in limited industries to staff who are suffering from flu-like symptoms who are being tested for COVID-19.

### **What are the details?**

All employers and employees in one of the following industries or jobs are covered under this law:

- Retail Establishments that Sell Groceries – amended on March 26, 2020
- Leisure and Hospitality
- Food Services
- Child Care
- Education (including transportation, food service, and other related work)
- Home Health (only if working with elderly, ill, high-risk, or disabled individuals)
- Nursing Homes
- Community Living Facilities

Amended on April 27, 2020 to include the following:

- Retail (other than establishments that sell groceries)
- Real Estate and Leasing
- Offices and Office Work
- Personal Care Services
- Elective Health Services

This law is effective on March 11, 2020 and will continue for at least 30 days or until expiration of emergency order from the governor, whichever is later.

## **What do employers need to do?**

Offer up to two weeks of paid sick leave at two-thirds of their regular pay to staff who have symptoms and are being tested for COVID-19. This also includes, per March 26, 2020, those under instructions from a healthcare provider to quarantine or isolate due to a risk of having COVID-19, regardless if the individual is seeking testing. If a negative result is received prior to two weeks, paid leave will end.

Additional paid days are not typically required if at least two weeks are provided to staff. However, if the employee currently has less than two weeks available as of the date of notice to employer of needing leave, an additional two weeks of paid leave must be provided.

During this time, an employer may request documentation from employees to show the need for leave and employees are required to give notice as soon as possible of their need for leave unless they are too ill to communicate. The employee must also notify the employer within 24 hours of being tested for COVID-19 and provide documentation as required by the employer either the end of their illness, or their return to work, whichever is sooner. Per the April 27, 2020 amendment, the employee must (1) receive a negative test, (2) be fever-free for 72 hours, and (3) other symptoms must be resolved.

In addition, the employee cannot return to work until they have been off for at least seven calendar days (10 if healthcare worker).

The employer may require the following, but this documentation is not required to take HELP:

1. Doctor's note (name, contact information, type of healthcare provider) with a prescription for COVID-19 test OR related documents as available, with a written note from the employee explaining the doctor's note is not available. The employee does not need to provide why the document is not available, only an outline of which documents are unavailable.
2. Documentation from the COVID-19 test provider (name, contact information, type of provider) to show the test was performed OR related documents as available with a written note from the employee explaining the provider's note is not available. The employee does not need to provide why the document is not available, only an outline of which documents are unavailable.

<https://www.colorado.gov/pacific/cdle/colorado-health-emergency-leave-pay-%E2%80%9Ccolorado-help%E2%80%9D-rules>

<https://www.littler.com/publication-press/publication/colorado-expands-coverage-and-amount-leave-under-health-emergency>

## Connecticut

### **Essential Workers**

#### **What happened?**

The governor signed an Executive Order effective April 20, 2020 at 8 p.m. regarding the required use of face masks in the workplace.

#### **What are the details?**

##### *All Essential Employers*

- Employees are required to wear a mask or other cloth material that covers their mouth and nose, except when the employee needs to eat or drink. If an employee is in a segregated space, they may remove their masks. All employees must wear the masks upon entry and exit from the workplace, or if they are in any common areas.

- Employees who have underlying health conditions that could be aggravated due to the use of a mask may choose to not wear a mask. However, medical documentation should be provided to the employer.

#### *Retail Stores*

- Employees shall wear a mask or other cloth material which covers their mouth/nose while the store is open to customers.
- All customers are required to wear masks while inside the retail facility (except for medical conditions, children under two years of age, or the parent is unable to place a mask safely on an older child).

#### **What do employers need to do?**

Essential employers should provide face masks to all employees. If unable to provide face masks, the employer should issue materials and directions per the CDC to create their own masks or compensate staff for money spent on materials to make their own masks.

#### **Resources**

<https://portal.ct.gov/DECD/Content/Coronavirus-Business-Recovery/Safe-Workplace-Rules-for-Essential-Employers>

<https://www.ctemploymentlawblog.com/2020/04/articles/state-makes-masks-mandatory-in-the-workplace-including-retail-stores/>

<https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7BB.pdf?la=en>

#### Indiana

#### **Employment of Minors**

##### **What happened?**

Effective April 1, 2020, amendments were made to employment of minors.

##### **What are the details?**

- Employees aged 14-15
  - May not work before 7:00 a.m. or after 7:00 p.m.
  - From June 1, 2020 through Labor Day, these employees may work as late as 9:00 p.m., except for the day which precedes a school day.
- Employees aged 16-17
  - May not work more than nine hours a day.
  - May not work more than 40 hours in a school week, 48 hours in non-school week.
  - May not work before 6:00 a.m. and may work as late as 10:00 p.m.
  - With parental written permission, these employees may work until 11:00 p.m.

- Minor Workers
  - All minor workers (under the age of 18) may not work after 10:00 p.m. or before 6:00 a.m. for any establishment that is open to the public unless another employee at least 18 years old is also currently working.
  - No minors may be compensated below federal minimum wage for the first 90 days of employment.

### **What do employers need to do?**

Comply with the above listed requirements for employment of minors. In addition, if an employer has at least five individuals who are between 14-17 years of age must register with the Department of Labor.

### **Resources**

<https://www.jacksonlewis.com/publication/indiana-revises-law-employment-minors>

## New Jersey

### **Updates to Mini-WARN Act**

#### **What happened?**

The governor signed a bill that makes critical changes to the NJ Warn Act which took effect on January 21, 2020, and postponed amendments to take effect on July 19, 2020.

#### **What are the details?**

- The WARN amendments have been postponed until 90 days after the governor lifts the Emergency Order. Tentative effective date of law is August 6, 2020.
- The new law has been amended to state the NJ WARN act cannot be triggered due to “fire, flood natural disaster, national emergency, act of war, civil disorder or industrial sabotage, decertification from participation in the Medicare and Medicaid programs...or license revocation.” This amendment is retroactive to March 9, 2020.

### **What do employers need to do?**

No action necessary.

### **Resources**

<https://www.littler.com/publication-press/publication/new-jersey-warn-act-covid-19-amendment-pending-radical-expansion-law>

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## **Paid Leave**

### **What happened?**

The governor signed a law that expanded the use of family leave due to COVID-19 retroactive to March 25, 2020.

### **What are the details?**

#### *Additional Leave*

- Employees may take leave to care for a child due to the closure of the child's school or place of care or care for a family member with COVID-19 or a related illness.
- Up to 12 weeks of unpaid job-protected leave within a 24-month period.

#### *Applicable Leave*

Employees may request leave for the following reasons:

1. In-home care or treatment of an employee's child due to closure of public school or place of care;
2. Under the requirement of a mandatory quarantine; and
3. Healthcare provider or public health authority recommending a family member under the employee's care voluntarily under self-quarantine.

#### *Certification*

- For reason 1: The date when the closure began and the reason for the closure.
- For reason 2: The date the public health authority issued the determination and the date of the determination.
- For reason 3: The date of the recommendation, likely duration of the condition, and medical or other facts related to the condition known to the public authority or healthcare provider.

#### *Additional Details*

- Employers may not deny leave for highly compensated employees.
- Intermittent leave is permitted for the following reasons:
  - The covered individual notifies the employer of the need for leave as soon as practicable and
  - The employee makes a reasonable effort to schedule leave to not unduly disrupt the employer's operations. A schedule of the time off needed is beneficial, but not required.

### **What do employers need to do?**

Comply with the above.

### **Resources**

<https://www.seyfarth.com/news-insights/paid-leave-and-coronavirus-part-xii-more-new-jersey-covid-related-paid-leave-amendments-including-school-closure-leave-signed-into-law.html>

## New York

### **Essential Workers**

#### **What happened?**

Effective April 15, 2020 at 8:00 p.m., all essential employers must provide masks for their employees to wear.

#### **What are the details?**

Employees must wear face masks when in contact with customers or members of the public.

#### **What do employers need to do?**

If you are essential employer, provide masks to all employees.

### **Resources**

<https://www.seyfarth.com/news-insights/new-york-issues-executive-order-requiring-employers-to-provide-essential-workers-with-face-masks.html>

## Pennsylvania

### **Safety Measures for COVID-19**

#### **What happened?**

All non-healthcare businesses who are authorized to be open must make the changes listed below.

#### **What are the details?**

1. Ensure workspaces are cleaned regularly in compliance with CDC guidelines;
2. Provide soap and hand sanitizer;
3. Provide masks to all employees to wear while on the worksite;
4. Stagger arrivals, departures, and breaks;
5. Provide sufficient space for employees to have breaks or meals at least six feet apart;
6. Limit in-person meetings to no more than 10 people;
7. Do not have too many staff in the workplace to conflict with the social distancing guidelines;
8. Non-essential visitors should be prohibited from entering the workplace; and
9. Employees must be informed of these requirements orally or in writing.

#### *All Businesses with Probable or Confirmed COVID-19 Case*

1. Close off the areas visited by the person, open doors and turn on fans, and then clean after 24 hours or as long as practicable;
2. Identify all employees who were in close contact with the diagnosed individual (within six feet for at least 10 minutes) within the previous 48 hours;
  - a. Asymptomatic – Adhere to CDC guidelines
  - b. Symptomatic – Send home immediately
3. Promptly notify other employees determined to be in close contact;

4. Implement temperature screening and send employees home who have a temperature of at least 100.4 degrees;
5. Sick employees should stay home if they have any symptoms related to COVID-19; and
6. Ensure the business has enough staff to comply with these directives effectively and timely.

*Additional Rules*

1. Businesses should operate by appointment only, or limit occupancy to no more than 50% of limit;
2. Adjust hours to ensure cleaning and restocking is completed;
3. Schedule hourly breaks for staff to wash hands;
4. All customers must wear masks, unless under the age of two or cannot wear a mask due to health reasons;
5. Social distancing must be maintained;
6. Signs should be placed informing public of social distancing rules;
7. Install shields or other barriers;
8. Companies with registers may only use every other register;
9. Carts are required to be cleaned;
10. Online ordering should be encouraged; and
11. Elderly/high risk shopping time must be provided at least once a week.

**What do employers need to do?**

Comply with the above stipulations.

**Resources**

<https://www.littler.com/publication-press/publication/significant-new-covid-19-health-and-safety-requirements-imposed>

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**Philadelphia Fair Workweek Law**

**What happened?**

On April 21, 2020, the Mayor's Office of Labor issued a [post](#) restating the key provisions of the city of Philadelphia's new Fair Workweek law, which took effect on April 1 despite the COVID-19 pandemic. The Fair Workweek law in Philadelphia requires covered employers to provide service, retail, and hospitality workers with a predictable work schedule. It also requires employers to provide good faith estimates and 10-day advance notice of work schedules, along with other worker protections.

**What are the details?**

Covered employers include retail, hospitality, and food services establishments with 250 or more employees (including full-time, part-time, seasonal, and temporary workers) and 30 or more locations worldwide, including chain establishments and franchises. While many such employers are currently not operating as a result of COVID-19, the new law presents an issue for them as they restart operations.

The new ordinance requires covered employers to:

- Post and provide 10-day advance notice of work schedules;
- Provide new employees with a written, good faith estimate of the employee's work schedule and revise the good faith estimate when there is a significant change to the employee's work schedule due to changes in the employee's availability or to the employer's business needs (employers have until July 1, 2020, to provide existing employees with a written good faith estimate of average work hours);
- Obtain employee consent when requesting to add hours to the employee's posted work schedule;
- Obtain employee consent in writing, and compensate the employee \$40, in the event it wants the employee to work any hours scheduled less than nine hours after the end of the previous day's shift;
- Offer existing employees the right to additional work shifts before hiring new employees;
- Notify each employee of its policy for offering and distributing work shifts under this law, at the time of hire and within 24 hours of any change in the policy; and
- Award predictability pay, a premium pay given to employees when there is an employer initiated change to the 10-day advance notice of work schedule (the city has confirmed that this predictability pay requirement will not be enforced until further notice due to COVID-19 and associated impacts on business activity).

As mentioned above, the city will not be enforcing the predictability pay requirement until further notice. Aside from that, employers are expected to comply with all other provisions of the law at the present time.

### **What do employers need to do?**

The Fair Workweek law is complex and requires employers to adjust their practices relating to scheduling of employees and assignment of work. To the extent employers are not already in compliance with the law, they should begin by taking the following first steps in order to meet the challenges of fulfilling their obligations: (1) Begin averaging hours for existing employees in order to meet the good faith estimate deadline of July 1, 2020; (2) Change scheduling practices to account for the 10-day advance notice of work schedules; and (3) Develop a written policy that complies with the law. Employers must prove compliance with the law if an employee files a complaint, and employers are in the best position to do so when they have specific policies and procedures in place that have been developed or modified to conform with the law, such as the following: policy for call-outs; procedure for documenting shift swaps; procedure for how time stamped schedules will be recorded and kept; procedure for monitoring good faith estimates; and policy on how new work hours will be distributed to existing employees. Because the law provides that its provisions may be waived in a collective bargaining agreement, covered employers with collective bargaining agreements should consider seeking a waiver of the law's requirements.

### **Resources**

<https://www.phila.gov/2020-04-21-fair-workweek-during-the-covid-19-pandemic/>

## Virginia

### **Restrictions on Non-Essential Businesses**

#### **What happened?**

The governor signed an order with restrictions on non-essential businesses.

#### **What are the details?**

Any retail establishment that is a non-essential business must limit all in-person shopping to no more than 10 patrons per establishment.

#### **What do employers need to do?**

Comply with the requirements above and ensure staff are trained on proper protocols.

#### **Resources**

<https://www.littler.com/publication-press/publication/virginia-extends-restrictions-nonessential-businesses>

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### **Anti-Discrimination**

#### **What happened?**

The Virginia Values Act was signed into law and is effective on July 1, 2020.

#### **What are the details?**

The current non-discrimination protections in employment extend to individuals based on their sexual orientation or gender identity. This generally applies to all employers with 15 or more employees, but additional employers are covered under the following circumstances:

1. More than five employees – Discharge based on race, color, religion, national origin, status as a veteran, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth, or related medical conditions (including lactation).
2. More than five, less than 20 employees – Discharge based on age.

#### **What do employers need to do?**

Ensure no employment decisions are made based on protected classes as outlined above.

#### **Resources**

<https://www.littler.com/publication-press/publication/virginia-enacts-new-legislation-offering-additional-protection-workers>

## Non-Compete Agreements

### What happened?

On July 1, 2020, it will be illegal in Virginia to require low-wage workers to sign non-compete agreements.

### What are the details?

Low-Wage Worker: Employee whose average weekly earnings are less than average weekly wage of the Commonwealth. This will be \$1,137 per week come July 1, 2020. To calculate the weekly wage, the employer will need to take the weekly average over the previous 52 weeks (or entire length of employment if employed for less than 52 weeks).

Low-wage workers also include interns, students, apprentices, or trainees who make less than the weekly average of the Commonwealth. This law also includes contractors who are paid less than the median hourly wage of the Commonwealth.

### What do employers need to do?

Ensure low-wage workers do not sign non-compete agreements after July 1, 2020. Each violation will be fined as a civil penalty of \$10,000.

Post a copy of the law as of July 1, 2020.

### Resources

<https://www.littler.com/publication-press/publication/virginia-enacts-new-legislation-offering-additional-protection-workers>

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## Workers Misclassification

### What happened?

On April 11, 2020, additional protections were put in place governing worker misclassifications.

### What are the details?

Effective January 1, 2021, Virginia will use the IRS guidelines to determine if an individual is an independent contractor or an employee. Violations of this law will be subject to \$1,000 civil penalties per misclassified individual.

Effective July 1, 2020, misclassified individuals may bring individual civil suits against an employer. If the court finds in favor of the misclassified individual, the employer may be responsible to pay for all back wages, attorney fees, and benefits.

### **What do employers need to do?**

Ensure staff are classified properly as independent contractors or employees.

### **Resources**

<https://www.littler.com/publication-press/publication/virginia-enacts-new-legislation-offering-additional-protection-workers>

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## **Wage Theft**

### **What happened?**

The Virginia Wage Payment Act amendment was signed into law in April 2020.

### **What are the details?**

Effective July 1, 2020, an employee will have the right to sue an employer who has not paid all wages due. This covers all employees and employers.

### **What do employers need to do?**

Ensure all employees are fairly compensated for all work completed in compliance with the Virginia Wage Payment Act and the Fair Labor Standards Act.

### **Resources**

<https://www.natlawreview.com/article/virginia-wage-payment-act-now-provides-meaningful-remedies-to-wage-theft-victims>

## Washington

### **“High Risk” Employees**

### **What happened?**

On April 15, 2020, the governor issued a proclamation extending additional protections for “high-risk” employees. This proclamation will remain in effect until at least June 12, 2020.

### **What are the details?**

The following individuals are protected:

1. Any individual 65 or older;
2. Anyone living in a nursing home or long-term care facility; and
3. Anyone with certain chronic [underlying health conditions](#).



If any of the above employees ask for alternative work assignments, the employer must exhaust all possible options, including telework. If unable to accommodate, the employer must provide all paid leave options. The employee may choose whether to use accrued leave or file for unemployment. If paid time off is exhausted, the employee's benefits must continue until the employee is cleared to return to work. Retaliation is prohibited.

If the employer needs to make a reduction in force, these protected individuals can be terminated, if the employment decision does not adversely impact their ability to obtain unemployment benefits.

### **What do employers need to do?**

Comply with the above requirements for high-risk employees.

### **Resources**

<https://www.jacksonlewis.com/publication/washington-proclamation-extending-job-protections-high-risk-employees-during-covid-19-crisis>

*The information and resources provided in this communication are not a substitute for experienced legal counsel and does not constitute legal advice or attempt to address the numerous factual issues that inevitably arise in any employment-related dispute. Although this information attempts to cover some major recent developments, it is not all-inclusive, and any recommendations are based upon HR best practices and procedures. We recommend you consult an attorney for legal guidance.*

**END OF UPDATES**