

WELCOME!

NAVIGATING THE EMPLOYER MINEFIELDS OF THE COVID-19 PANDEMIC



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Today We Will Discuss:

1. The latest from the Governor on Remote Work Requirements
2. Workers' Compensation Presumptions of Liability on COVID-19 Related Safe Work Place Requirements
3. Expanding Areas of Third Party Liability from COVID-19 Exposure
4. Current Status of Leave of Absence Requirements for COVID -19 Related Illnesses of Employees and Family members
5. Protecting Your Company's Trade Secrets and Confidential Information When Everyone is Working from Home

COVID-19 Legislative Update

- Workers Compensation Presumption

- COVID-19 Safe Workplace Requirements
 - Cal/OSHA
 - Governor Newsom; CDPH
 - County/Local
 - Travel Restrictions
 - Safe Reopening / Back to Business Plans?
 - Temperature Screening? Health Screening Questions?
 - Privacy Notice

- Remote Work Requirements; Potential Shutdowns/Furloughs

UNDERSTANDING THE EMERGENCE OF THIRD PARTY CLAIMS

2 TYPES OF CLAIMS EMERGING

1. Claims for Wrongful Death By Families of COVID Infected Employees Claiming Employers Failed to Keep Their Family Member Safe While at Work
2. Claims By Family Members of COVID Infected Employees Who Get COVID Themselves Claiming Employers Failed to Keep Their Family Members Safe While at Work

COMMON ALLEGATIONS IN THIRD PARTY LIABILITY CASES

- Failure to Implement Policies and Procedures in Conformity With the State's Pandemic Directives
- Failure to Provide Appropriate Safety PPE Equipment and Provide Adequate Training to Employees on COVID Safety Practices
- Failure to Apply Social Distancing Measures
- Failure to Warn Employees of the Danger of COVID
- Failure to Test and Conduct Contact Tracing
- Failures are Alleged to be Wanton and Reckless

Leaves of Absence for COVID-19 Related Issues

- Families First Coronavirus Response Act
 - Covered Employers
 - EPSL/EFMLA uses; benefits; tax credits
 - Small business exemption; healthcare employer exemption*
 - Intermittent leave?
 - Documentation?

Leaves of Absence for COVID-19 Related Issues

Other Leaves

- California Paid Sick Leave
- Local sick leave ordinances
- FMLA/CFRA?
- California short-term disability leave?
- California Paid Family Leave?
- Workers Compensation?
- Employer-sponsored leaves? (company policy)
- Unemployment insurance eligibility?

One of My Employees Has COVID-19 – What Do I Do?

Step 1: Gather Background Facts

- WHO has been exposed?
- HOW were they exposed?
- Do they have symptoms? What symptoms?
- Have they been tested?
- WHEN did they get exposed or test positive?
- WHO else has been exposed? (Contact Tracing: 6-15-48 Rule)

One of My Employees Has COVID-19 – What Do I Do?

- **Step 2: Who Needs to Be Notified?**

- Co-workers who worked in close proximity to infected employee
- Other employees? Vendors? Customers?
- What should notice say?
- Health authorities?
 - Check local health orders. Notice to employee?

- **Step 3: What Needs to be Done at the Workplace?**

- Closure?
- Cleaning and Disinfecting?

One of My Employees Has COVID-19 – What Do I Do?

• **Step 4: What About the Infected Employee?**

- Do not come to work
- Are they getting tested? Have they been tested?
- Can you require them to get tested?
- Assess when safe to return
 - Symptomatic or Asymptomatic?
 - Date of exposure?
 - Date symptoms first appeared?
 - Date of positive test? Negative test(s)?
 - CDC guidelines; local health orders; doctor's note?
 - Leaves of absence?



PROTECTING CONFIDENTIAL BUSINESS INFORMATION AND COMPETITIVE ASSETS

AS YOU PREPARE FOR EMPLOYEES
TO RETURN TO WORK – OR TO
CONTINUE WORKING FROM HOME

Employees Who Have Been Let Go

- Ensure that employees who are (or have been) let go have returned all confidential information.
 - “Hard Measures”
 - Written certification of full return and purge
 - Systems analysis – does it show pattern of downloading or printing?
 - Reminder letter from Legal or HR
 - “Soft Measures”
 - HR or Manager interview employees, if still possible
 - Include data collection/retrieval questions in any exit interviews

Employees Who Have Been Let Go

- ❑ Ensure that employees who are (or have been) let go have returned all confidential information.

“Information, including a formula, drawing, pattern, compilation including a customer list, program, device, method, technique or process that ... [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

- ‘Circumstances’ have changed
- But ‘efforts’ remain crucial

Employees Who Have Been Let Go

- ❑ Determine whether employees who are (or have been) let go are working for competitors.
 - Create procedures to systematically check for new employment locations of company ‘alumni’
 - Who ‘owns’ this project? Business unit? HR? Legal?
 - Assess whether reminder of confidentiality obligation letters and/or cease and desist letters need to be provided to employees who have been let go

Employees Coming Back to Workplace

- Have a protocol in place for remote workers to return all confidential information to company systems, devices, and accounts and then ensure that they have not retained materials on their personal devices and accounts.
 - Have all returning employee sign a Certification form
 - No company data remaining on any personal device
 - No company data in personal email accounts or cloud storage accounts
 - No company documents or info remaining at home
 - IT do (random?) system checks for concerning patterns of printing, downloading or accessing information

Hiring New People Who Have Been Working from Home for a Competitor

- Be proactive about educating new employees to purge themselves of materials from former employers.
 - Heightened risk of intentional or unintentional possession of confidential business information
 - Require competitive recruits to sign a Certification form
 - Ascertain whether any other restrictive covenants exist
 - Analyze enforceability and any potential work-arounds
 - Assess potential for disloyal conduct while working from home
 - Temptation to pre-solicit
 - 'No one is watching' at home

Q&A



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Post-Pandemic Back-To-Business FAQs For Employers

Comprehensive set of FAQs that will be continually updated throughout the recovery period. not only do we go deeper on all these topics, but we also have detailed information about:

- SBA Loans
- Paid Sick Leave and E-FMLA
- Benefits
- Unemployment
- I-9s and Immigration Issues
- International Workplaces
- Trade Secrets Concerns
- ...and more

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Next Webinar – October 1st – 9:30 – 10:30

WCIRB will cover:

COVID-19 Special Regulatory Changes

Payroll Exclusions

Re-Classifications

Claims Reporting and Experience Rating

2021 Dual Wage Changes for Contractors

2021 Classification Updates