



Next Level Strategies

We Focus on HR so You Can Focus on Your Business

415.876.NEXT



Hello clients, friends and colleagues, and a belated happy, healthy new year to all of you. I'm sorry we're getting updates out so late. It's a very busy time with new regulations due to Covid – from new safety measures to financial support for businesses and other changes. We have decided to break all of the new regulations into two newsletters. This one is all Covid legislation related. The next newsletter will address all other changes.

We've had questions about the **handbook updates** too. As things have been changing so quickly, we've been delayed in the handbook updates but they should be ready later this week. Another notice will go out with pricing and details.

If you are considering having employees start working from an office again, please consider the content of this newsletter. Because Cal/OSHA adopted certain standards and Governor Newsom passed SB1159 and AB685, you'll see that some regulations overlap. This newsletter is an abridged version of some very detailed new regulations and you should read those in their entirety as time allows.

Most of the new Covid-related requirements are for employers of any size. A brief list of new requirements includes:

1. Have a written Covid plan addressing a list of proscribed topics.
2. Pay for Covid testing and PPE.
3. Pay for time off to quarantine.
4. Notify employees within 24 hours of exposures.
5. Notify the health department and workers' comp.

The good news is that HR support is one of the allowable expenses with the second round of PPP. Please reach out if you need help with any of this.

Updates, News and Information

FFCRA Update

We're leading with this before your eyes glaze over with all of the workers' comp-related requirements. While the mandate to provide leave still ended December 31, 2020, the Consolidated Appropriations Act allows employers to **voluntarily** extend Families First Coronavirus Response Act (FFCRA) benefits through **March 31, 2021**, and still receive the dollar for dollar (immediate) tax credit. There is no financial downside to employers, so we are in favor of it.

The extension only applies to employees who still have time left from 2020. Leave banks have not been replenished.

As a reminder, FFCRA can be used for the following:

Emergency Paid Sick Leave

Up to 80 hours of leave when employee is unable to work (including remotely) because of COVID-19 related:

1. Federal, State or local quarantine or isolation order
2. Health care provider advice to self-quarantine
3. Symptoms and seeking medical diagnosis
4. Need to care for an individual described in 1 or 2
5. Need to care for employee's child due to school closure or unavailability of childcare provider

Emergency Extended FMLA:

Up to 12 weeks of leave to care for employee's child due to school closure or unavailability of childcare provider.

Cal/OSHA COVID-19 Emergency Standards and Regulations Effective November 30, 2020

Several new laws have come out to support the protection of employees from contracting Covid-19 at work. The most sweeping (so sweeping that there may be some legal challenges) are from Cal/OSHA.

This particular set of changes **requires employers of any size to establish, implement, and maintain an effective written COVID-19 Prevention Program** which includes:

- Identifying, evaluating and investigating employee **exposures** to COVID-19 health hazards.
- Implementing effective **policies and procedures** to correct unsafe and unhealthy conditions (such as safe physical distancing, modifying the workplace and staggering work schedules).
- **PPE:** Providing (or reimbursing) and ensuring workers wear face coverings in the workplace. If an accommodation is needed, provide face shields, drapes or other possible safety measures.
- Provide effective **training** and instruction to employees on how COVID-19 is spread, infection prevention techniques, and information regarding COVID-19-related benefits that affected employees may be entitled to under federal, state, or local laws.
- System for **communicating**, responding to COVID-19 cases in the workplace.
- **Reporting, record keeping, and access.**
- **Return to work criteria.**

Here is a **free resource** from Cal/OSHA to help you develop your written program: **COVID-19 Model Prevention Program**. NLS can also help as much or as little as you need.

There is also a sweeping set of requirements for employers with multiple COVID-19 infections and outbreaks at the worksite:

1. Employers must follow the testing requirements and **notify public health departments** of workplace outbreaks (three or more cases in a workplace in a 14-day period) and major outbreaks (20 or more cases within a 30-day period). Defined below.
2. Offer on or offsite, confidential COVID-19 **testing at no cost** to employees who had

potential COVID-19 exposure in the workplace during their work hours so employees are paid for the time and travel. Talk to an attorney if you plan to do your own testing.

3. **Provide** employees with **information** on all applicable time off or other **benefits** such as workers' compensation, COVID-19-related leave, company sick leave, state-mandated leave, and anti-retaliation/anti-discrimination protections.

4. **Notify the local health department** within 48 hours after learning of three or more COVID-19 cases to obtain guidance.

5. **Maintain a record** of and track all COVID-19 cases, while ensuring medical information remains confidential. The records must be made available to employees after identifying information is removed. Records must be added to Cal/OSHA Log 300A each year.

6. When a COVID-19-related illness requires inpatient hospitalization or death occurs, the employer must report this immediately to the nearest Cal/OSHA enforcement district office.

Applies to all employees and employers with the following **exceptions**:

- Places of employment with one employee who does not have contact with other people
- Employees working from home
- Employees already covered by Cal/OSHA's aerosol transmission standard

Additional Requirements:

- Create and maintain an Illness and Injury Prevention Program (IIPP) with rules to establish, implement, and maintain a written COVID-19 Prevention Program. (See above.) IIPPs are already a requirement for all employers and this just adds more detail.
- Implement a disinfection and safety plan per CDC guidelines.

Employers must continue salary and benefits for up to 14 days while person is absent from workplace due to COVID-19. If employees are not allowed to come to work, but able and available to work, employers must continue to maintain an employee's earnings, seniority, and all other employee rights and benefits, as if the employee had not been removed from their job.

o Employees may use sick leave benefits and or state benefits to maintain earnings when not covered by workers compensation.

Exceptions to Pay Continuation Requirement:

- Worksites with one employee who doesn't have contact with other people
- Employees working from home
- Employees when covered by Cal-OSHA's Aerosol Transmissible Disease Regulations (CCR 5199)
- Any period of time during which employee is unable to work for reasons other than preventing COVID transmission
- When employer can demonstrate that COVID exposure is not work-related

Return to Work Criteria:

COVID-19 cases with symptoms can't return to work until:

1. At least 24 hours have passed since a fever of 100.4 or higher has resolved without medication use.

2. Symptoms have improved.
3. 10 days have passed since symptoms first appeared.
 - Positive COVID-19 cases without symptoms can't return until a minimum of 10 days have passed since positive test specimen collection.
 - Negative COVID-19 test not required to return to work.
 - If ordered to isolate or quarantine, employee cannot return until the quarantine period expires.

SB 1159 – Workers Compensation: COVID-19 Effective Immediately through 1/1/2023

SB 1159 expands workers' compensation coverage for employees who contract COVID-19. If certain criteria are met, it will be automatically presumed that the employee contracted COVID-19 in the workplace, making them eligible for workers compensation.

- Codifies previous order of rebuttable presumption of work-relatedness for workers who contracted COVID-19 between March 19 – July 5, 2020.
- Creates a “rebuttable presumption” for first responders and health care personnel.
 - o Employers have 30-days to reject and rebut these claims.
- Applies to all companies with five or more employees when there is an “outbreak” in the workplace. This law presumes:
 - o The employee tests positive within 14 days after working at the place of employment
 - o The date worked is after July 6, 2020 and;
 - o The positive test occurred during an “outbreak” at the employee’s place of employment

Employers have 45 days to reject a claim with evidence such as measures taken to reduce transmission of Covid or employee’s risks of COVID-19 infection outside of work such as a spouse in a high-risk occupation.

An outbreak is defined as:

- 100 employees or fewer at a specific location, four employees test positive for COVID-19 within 14 days of each other.
- More than 100 employees at a specific location, 4% of the employee population test positive within 14 days.
- Public authorities order the Company to close due to risk of COVID-19 infection.

Reporting Requirements:

- When a Company with five or more employees, “knows or reasonably should know” that an employee tested positive for COVID-19; the employer must inform their workers’ compensation within three business days when:
 - o An employee tested positive,
 - o The date when the employee tested positive,
 - o The address of the employee’s worksite, and;
 - o Highest number of employees who reported to the worksite within 45 days of when the employee last worked.

Retroactivity: An employer who is aware of any employee testing positive on or after July

6, 2020, but before September 17, 2020 (effective date), must report the employee information described above to their workers' compensation claims administrator within 30 days.

AB 685 – COVID-19 Cal/OSHA Notice Requirements Effective January 1, 2021

- Without naming names, employers must notify all employees and independent contractors at a worksite of potential exposures to COVID-19, benefits and protections, plus disinfection and safety measures that will be taken at the worksite if there is a potential exposure.
- Employers must notify local public health agencies of all workplace outbreaks, which is three or more positive tests among employees who live in different households within a two-week period.
- Notifications must occur within one business day. Must maintain records of notifications for at least three years.
 - From January 1, 2021 until January 1, 2023, Cal/OSHA can:
 - issue an Order Prohibiting Use (OPU) to shut down an entire worksite or a specific worksite area that exposes employees to an imminent hazard related to COVID-19; and
 - issue citations for serious violations related to COVID-19 without giving employers 15-day notice before issuance.

Our Mailing Address

Our mailing address is:
1155-C Arnold Dr. #249 Martinez, CA
94553.

Please let your accounting group know to send invoice payments and other correspondence to this address. Thank you!



Austin and New York Assistance

As a reminder, our Austin, Texas, office is up and running, with Taune Lima heading that office. We have a consultant in New York City as well. If you have employees in these areas, we're happy to support them as well as your California employees.



Thank You for Your Referrals!

They are the highest form of compliment to us. We love providing great service and we truly enjoy knowing the service we've given you was worthy of a referral.

Thank you very much!

If you received this from a friend, we hope you will join our mailing list to receive monthly updates on important human resources news. You may unsubscribe at any time. Please be assured that we do not share our mailing list with any other business or organization.

Join our Mailing List!

If any of this is news to you or you need support managing any of the changes, please call us at 415.876.NEXT. Thank you for reading!

Julie Chendes, Taune Lima, Joy Vail, Katie O'Donnell, Alexis Haman, Cecilia Reynoso, Susan Netzer and Deidra Peiler.

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