BUSINESS BRIEF:
CALIFORNIA QUARTERLY EMPLOYMENT LAW UPDATE

JANUARY 28, 2021

RAINESFELDMAN

THIS EDITION

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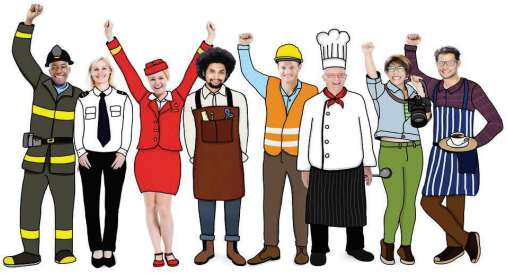
COVID-19 Vaccine Considerations: California's Phased Rollout

BY: MATTHEW GARRETT-PATE and PHILLIP MALTIN



While the federal government is providing states with supplies of vaccines, it has left each state to determine how to prioritize vaccine distribution. California has adopted a tiered system establishing phases for when certain groups will receive the vaccine. Counties, including Los Angeles, may adopt more specific distribution schedules within the framework set forth by the state. California's phases include the following groups:

Phase 1a:

- Persons at risk of exposure to COVID-19 through their work in any role in direct health care or long-term care settings;
- Residents of skilled nursing facilities, assisted living facilities, and similar long-term care settings for older or medically vulnerable individuals; and
- All individuals over age 65, prioritizing those at greatest risk (Formerly, Phase 1b, Tier 1).

Phase 1b, Tier 1:

- Workers in education, like teachers and childcare;
- Emergency services workers; and
- Food and agriculture workers, like farm workers and grocery workers.

Phase 1b, Tier 2:

- Workers in transportation and logistics;
- Industrial, residential and commercial sectors;
- Critical manufacturing workers;
- Incarcerated individuals; and
- Homeless individuals.

Phase 1c:

- Anyone 50 and older;
- Anyone 16 to 64 years old with an underlying health condition or disability;
- Workers in water and waste management;
- Workers in the defense, energy and chemical sectors;
- Communications and IT workers;
- Financial services and government operations workers; and
- Community service groups.

Phase 2:

- California's vaccine advisory committee has not released this information.

Employers should refer to their county's vaccine distribution webpage to determine when their employees may become eligible to participate in vaccine distribution, and to obtain additional information regarding priority. State or local government agencies may require employers to apply for authorization to send employees to vaccination centers.

Requiring Vaccinations In most circumstances, employers may require employees to receive the vaccine. To do this, according to the Equal Employment Opportunity Commission, employers should conduct an individualized assessment of four factors to determine whether a direct threat to workers exists: (i) the duration of the risk, (ii) the nature and severity of the potential harm, (iii) the likelihood that the potential harm will occur, and (iv) the imminence of the potential harm. If an employer adopts a mandatory vaccine policy, it must be careful taking adverse action against employees who refuse to get it because of a disability or sincerely held religious belief. Absent exceptional circumstances demonstrating the religious belief is false or the disability is unrelated to receipt of the vaccine, the employer must make reasonable efforts to accommodate the objecting employee. The employer may wish to consider vaccine alternatives that do not

place an undue burden on the employer, including isolating the employee from others at work or requiring the employee to work-from-home.

Employers must also be careful about how employees receive the vaccine. The safest way, liability-wise, for an employer to have employees get the vaccine is through a government distribution site. Additional legal hurdles arise when an employer requires the vaccine and administers it, whether through the employer's own medical personnel or a contracted third party like CVS. Vaccine administration requires asking the recipient personal medical questions, which qualify as a medical examination under applicable law. Not only does the employer have heightened responsibilities to protect this medical information, but it must justify conducting a medical examination. Before administering the vaccine or contracting with a third-party healthcare organization to deliver it, the employer must establish that the vaccine is "job-related and consistent with business necessity." Only after passing these hurdles and establishing no reasonable accommodation exists could an employer tell a disabled employee or religious objector that they cannot be at the worksite.

If the vaccine program is voluntary, these criteria do not apply, but an employer must not retaliate against an employee for refusing the vaccine.

An employer can require an employee to produce proof of vaccination without violating the medical examination rules discussed above. Regardless of whether the vaccine is mandatory, an employer must maintain the confidentiality of medical information received about an employee.

New Cal/OSHA Emergency Temporary Standards Now in Effect

BY: RICARDO ROZEN and PHILLIP MALTIN

Almost all California employers are now subject to Cal/OSHA's COVID-19 Emergency Temporary Standards ("ETS"). Below we summarize the emergency regulations.

When Do the ETS Go into Effect and to Whom Do They Apply?
The regulations went into effect on November 30, 2020, and will remain in place through October 1, 2021, unless extended or repealed. They apply to almost all California employers, though not to employees working from home and to certain healthcare providers.

Employers Must Have a Comprehensive Written COVID-19 Prevention Plan
According to Cal/OSHA- Employers should develop, implement, and maintain a written COVID-19 Prevention Plan that discuss at least these areas:

1. System for communicating;
2. Identification and evaluation of COVID-19 hazards;
3. Investigating and responding to COVID-19 cases in the workplace;
4. Correction of COVID-19 hazards;
5. Training and instruction;
6. Physical Distancing;
7. Face coverings;
8. Other engineering controls, administrative controls, and personal protective equipment;
9. Reporting, recordkeeping, and access;
10. Exclusion of COVID-19 cases; and
11. Return to work criteria.

Cal/OSHA details the information employers must cover in each area.

Cal/OSHA may scrutinize the employer's Prevention Plan to determine if it will issue citations because a business failed to provide the information. Employment lawyers may target businesses suspected of failing to develop and implement plans that conform to Cal/OSHA's regulations, for example under the Private Attorneys General Act. California employers may wish to review their current COVID-19 Prevention Plans to ensure they comply with the ETS.

Notification Requirements
Cal/OSHA's regulations mandate that employers notify all employees and independent contractors who may have been exposed to COVID-19 during a "high risk" exposure period. According to Cal/OSHA, a high-risk exposure period runs from two days before symptom onset or two days before specimen collected for the first positive test, whichever is earlier, until the employee meets the criteria for returning to work specified in the "Exclusion" (discussed below). Employers may reveal that an employee tested positive for COVID-19 but should not identify who.

Some state and local laws may require an employer to report to government agencies and workers compensation insurance carriers that an employee tested positive for COVID-19. *Please see "COVID-19 Notification Requirements" below on page 9.*

Exclusion for Exposed and Infected Individuals
Cal/OSHA requires that individuals exposed to COVID-19 stay away from the workplace, or quarantine, for 14 days from date of last exposure. It permits a 10-day quarantine, though it recommends 14 days. According to the agency, employees who test positive but do not show symptoms may not return to work (i.e., leave isolation) until at least 10 days have passed since their first positive test. Employees who developed COVID-19 symptoms may return to work after (i) at least 24 hours have passed without a fever of 100.4 or higher without the

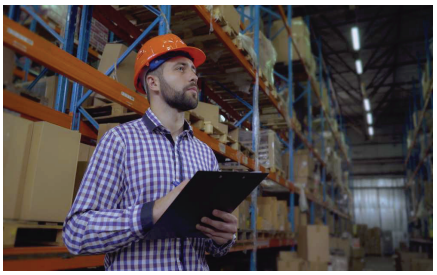
use of fever-reducing medications, (ii) COVID-19 symptoms have improved, and (iii) at least 10 days have passed since COVID-19 symptoms first appeared.

Wage Payment for Excluded Individuals
Cal/OSHA states that employers shall continue to pay "and maintain an employee's earnings, seniority, and all other employee rights and benefits, including the employee's right to their former job status" if the employee is able to work but excluded from the workplace because of COVID-19 exposure. Employers may wish to use employer-provided sick leave benefits for this purpose and to consider benefit payments from public sources to maintain earnings and some benefits. Two exceptions to this rule exist. According to Cal/OSHA, employers need not pay an employee's wages when the employee is unable to work for reasons other than protecting persons at the workplace from possible COVID-19 transmission. Second, according to the agency, the employer has no obligation to pay the employee if the employer can demonstrate the COVID-19 exposure was not work-related. *(See Allison Wallin's note below.)*

Testing Requirements in the "Exposed Workplace"
Cal/OSHA defines an "exposed workplace" as a common area accessed by someone who tested positive for COVID-19 case during a high-risk period (defined above). The exposed workplace includes bathrooms, walkways, hallways, aisles, break or eating areas, and waiting areas. If, within 14 days, three or more COVID-19 cases appear, the employer must immediately provide free testing to all employees at the workplace, with additional tests one week later. Testing must continue every week until the outbreak resolves.

If a "major outbreak" occurs in an exposed workplace (that is, 20 or more cases within a 30-day period), employers must provide testing at least twice a week until there are no new cases in a 14-day period. Employers must also provide for free testing to any employee potentially exposed at work even if there is no outbreak.

The new regulations provide much needed clarity regarding employer obligations and the required contents of a COVID-19 Prevention Plan. They also impose obligations on employers at a time when many businesses are struggling to follow proliferating COVID-19 regulations. Please contact us to discuss how we can help you comply.



Employers Seek to Enjoin Cal/OSHA's Emergency Temporary Standard

BY: ALLISON WALLIN

California business groups led by the National Retail Federation are seeking to enjoin Cal/OSHA's November 30, 2020 Emergency Temporary Standards ("ETS"). The hearing on the preliminary injunction is set for January 28, 2021. The business groups assert that the court should block the ETS because California passed the onerous regulations without public notice or a full public hearing, which violates the California Administrative Procedure Act. They also claim that Cal/OSHA exceeded its authority by attempting to regulate wages and paid leave, and that the regulations arbitrarily and capriciously deprive businesses of property without just compensation or due process. In particular, they attack the requirement that employers pay for COVID-19 testing and provide mandatory periods of paid exclusion from work. Contact Raines Feldman for details on how the court rules.

To Quarantine or To Isolate?

BY: LAUREN J. KATUNICH

Employers have navigated uncharted territory throughout the COVID-19 pandemic. They have learned how to comply with public health guidelines and orders that control when employees exposed to or infected with the virus may return to the workplace. Public health guidance has evolved throughout the pandemic, making it especially difficult for employers to know when employees need to self-isolate or self-quarantine, and for how long.

One common source of confusion relative to timing for employees' return to work is imprecise terminology. Regulators often use the terms "quarantine" and "isolation" interchangeably. They are, however, dissimilar concepts with different timeframes. "Isolation" separates sick people or people with a COVID-19 diagnosis from people who are not sick. "Quarantine," on the other hand, separates and restricts the movement of people exposed to COVID-19 to see if they become sick. Put differently, a person with a confirmed or presumed case of COVID-19 isolates, while a person who has been in "close contact" with a confirmed or presumed case of COVID-19 quarantines.

The definition of who is a "close contact" has also changed. The Centers for Disease Control and Prevention ("CDC") now defines "close contact" as someone who was within six feet of an infected person for a total of 15 minutes or more over a 24-hour period starting two days before illness began (or, for asymptomatic patients, two days prior to test specimen collection) until the time the patient no longer is isolated. This definition is particularly important as it determines which employees need to be sent home to self-quarantine and which employees can safely continue to work.

The rules for self-isolation have remained consistent throughout the pandemic and across all federal, state, and local public health agencies. Specifically, people with confirmed or presumed cases of COVID-19 must self-isolate for a period of at least 10 days from either the onset of symptoms, or if no symptoms appear, from the date of the positive COVID-19 specimen collection. So, for example, if an employee develops symptoms on January 1, that same employee cannot return to work until January 12 at the earliest. To return to work the employee must also have been fever-free for at least 24 hours and have improved symptoms.

The rules for self-quarantine have changed over time and are not consistent across all federal, state, and local public health agencies. Through most of the pandemic, the CDC and all state and local public health agencies required that close contacts self-quarantine for 14 days. Recently, the CDC amended that guidance to allow close contacts to leave quarantine after 10 days so long as symptoms do not develop, or to leave quarantine after seven days so long as the person receives a negative COVID-19 test result with specimen collection taken at least five days after the exposure. While the California Department of Public Health follows the CDC's guidance, the Los Angeles Department of Public Health ("LADPH"), refuses to permit employees to return to work after seven days even if they receive a negative COVID-19 test. The LADPH has instead taken the position that the earliest an exposed employee may return to work is 10 days after the exposure. Further complicating the matter is that Cal/OSHA, the public agency tasked with regulating health and safety within the workplace, has taken the position that exposed employees must quarantine for 14 days. Cal/OSHA's 14-day quarantine rule appears to be a vestige of the earlier public health guidance rule that required a 14-day quarantine period. The agency recently released guidance recommending a 14-day quarantine but permitting employees to return after 10 days if they do not develop symptoms.

Another confusing scenario for employers is the quarantine period for employees with members of the same household who test positive for COVID-19. Many employers mistakenly believe that if an employee's spouse, for example, tests positive for COVID-19 and the spouse enters a 10-day isolation period, the employee may concurrently enter quarantine and leave quarantine when their spouse leaves isolation 10 days later. In most cases this is not so. Unless the spouses are separated during the positive spouse's isolation period—which is difficult to do if they live in the same house—the non-positive spouse cannot commence their 10 or 14 day (as applicable) quarantine period until the spouses' last exposure to one another (e.g., they can physically separate themselves) or until the positive COVID-19 spouse leaves isolation. Thus, where multiple members of a household are COVID-19 positive, a non-positive employee may not be able to return for a month or more.

Keeping up with changing public health guidance and orders and implementing such guidance and orders correctly is challenging. One way to stay current is to assign one person to track this information. Another is to stay in contact with legal counsel who can provide the latest information.

COVID-19 Related Work Leaves: Where Do We Stand?

BY: RICARDO ROZEN and PHILLIP MALTIN

Since March 2020, federal, state, and local governments have implemented new and expanded paid leave programs for absences related to COVID-19. Some have expired; some remain. Below we summarize the status of COVID-19 related leaves in California.

Families First Coronavirus Response Act ("FFCRA")/California Supplemental Paid Sick Leave
The FFCRA required employers with less than 500 employees to provide emergency paid sick leave ("EPSL") and expanded family and medical leave ("EFMLA") to employees for COVID-19 related reasons. The FFCRA expired on December 31, 2020, and Congress did not renew EPSL and EFMLA. The stimulus bill Congress passed extended the tax credits available to employers under the FFCRA for paying out EPSL and EFMLA benefits. Employers may continue to provide those benefits through March 31, 2021, and receive a capped tax credit for EPSL and EFMLA payments to employees. Employees, however, will not receive a new bank of leave in 2021 and may only take unused days. President Joseph Biden's recently released plan extends and expands FFCRA, if passed by Congress.

On December 31, 2020, California's supplemental paid sick leave law also expired. It had required California employers with 500 or more employees nationwide (as well as certain health care providers and emergency responders) to provide COVID-19 supplemental paid sick leave.

City of Los Angeles Supplemental Sick Leave
This law applies to employers with 500 or more employees in the City of Los Angeles or more than 2,000 employees nationally. In order to qualify for this leave, an employee must be unable to work or telework for one of the following reasons:

- Employee takes time off due to COVID-19 infection or because a public health official or healthcare provider requires or recommends they isolate or self-quarantine to prevent the spread of COVID-19;
- Employee takes time off because they are least 65 years old or has a health condition such as heart disease, asthma, lung disease, diabetes, kidney disease, or weakened immune system;
- Employee takes time off because they need to care for a family member who is not sick but whom public health officials or healthcare providers have required or recommended to isolate or self-quarantine; or
- Employee takes time off because they need to provide care for a family member whose senior care provider or whose school or childcare provider (for a child under the age of 18) temporarily ceases operations in response to a public health or other public official's recommendation.

This law remains in place until the local health emergency subsides.

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Furloughs Caused By COVID-19 May Trigger Final Pay Obligations, Including Vacation-Leave Payout

BY: ALLISON WALLIN

California law requires employers to issue final paychecks, including all wages, bonuses, and accrued but unused vacation (or paid time off), immediately upon discharge. Failure to pay all compensation owed risks “waiting time penalties” of up to 30 days of additional pay for each day the employer willfully fails to pay the discharged employee. The penalty is based upon the employee’s average daily wage. If a furlough is deemed a termination, then the employer must pay all wages, bonuses, and accrued but unused vacation on the date the furlough begins. California law is unclear on when a furlough equates to termination of employment. However, in an opinion letter the California Division of Labor Standards Enforcement states that a furlough with a definite length of 10 days or less is not a job termination. On the other hand, a furlough is likely a job termination if it does not have a definite return-to-work date, exceeds 10 days, or extends beyond the current pay period. To avoid waiting time penalties, employers should pay out all accrued wages, bonuses and unused vacation or paid time off on the last date of work before a furlough commences.

COVID-19 Wage and Hour Pitfalls

BY: LETICIA KIMBLE and PHILLIP MALTIN

Employers facing complex legal, medical, and ethical considerations due to COVID-19 must remember to keep wage and hour issues at the forefront of their decision making. The COVID-19 pandemic created new rights for employees and additional wage and hour obligations for employers. For example, businesses must compensate employees for time spent doing temperature screenings or undertaking PPE compliance before their shifts. Businesses that pivoted to remote work should ensure that their timekeeping system accurately records all time worked. In addition, employees working from remote locations must receive their meal and rest periods. Employers remain obligated to reimburse employees for their necessary business expenses, often including cell phone use and home internet service. Employers looking to reduce salaries must remember the "salary test" required for employees to preserve the exemptions. An employee must receive twice the state minimum wage. These are just a few of the wage and hour issues being litigated in this new pandemic reality, and there are more on the horizon.

Public Nuisance Claims Continue to Appear Amid Rise In Traditional Employment Litigation

BY: PHILLIP MALTIN

In most states, an action for public nuisance occurs when a business causes a substantial and unreasonable interference with the interests of the community or with the comfort and convenience of the general public. Claims that a business has created a public nuisance by failing to follow government mandated procedures designed to protect employees from COVID-19 have appeared infrequently and with varying success across the country. Cases in Missouri and New York, heard in federal court, have failed; cases in Illinois and California, decided by state courts, have succeeded.

Early in the pandemic, employees sued Smithfield Foods, a pork processing plant in Missouri. The claim, however, failed when a federal court concluded that measures Smithfield took to protect its employees were “reasonable under the circumstances.” Amazon employees recently sued the internet giant in New York for public nuisance and breach of the duty to protect workers’ health and safety, among other things. The employees alleged that Amazon failed to comply with government-issued workplace guidance. Amazon argued that the Occupational Safety and Health Administration (“OSHA”), not the federal courts, has “primary jurisdiction” over the claim. In November 2020, the court dismissed the case. It cogently noted that “someone has to strike a balance between maintaining some level of operations in conjunction with some level of protective measures.” The court further observed that the federal courts are “particularly ill-suited to address” workplace safety. The experts at OSHA would “be more flexible” and “ensure uniformity” in workplace policies and practices.

Contrast those cases with two against franchisees owning McDonald's restaurants, one in Illinois and one in California. In Illinois, a state court judge ruled that two McDonald's locations needed to improve their training on social distancing. It also ruled that, while the stores had "the right idea" for protecting its workers, they did not apply protective measures "exactly as McDonald's envisioned, thus endangering public health." The court concluded the restaurant locations needed more robust enforcement of their policy requiring employees to wear masks.

On May 26, 2020, a California superior court closed a McDonald's franchise in Oakland after plaintiffs claimed the business created a "public nuisance" by failing to protect its workers from COVID-19. The workers claimed the restaurant gave them dog diapers and coffee filters to use as masks, causing 35 people to contract the virus. On August 13, 2020, the court permitted the restaurant to reopen, but it ordered the business to give workers a break every 30 minutes to wash their hands and sanitize surfaces. The restaurant must also perform contact tracing of workers and customers known or suspected to have COVID-19.

To try to avoid claims of public nuisance, businesses should ensure that workers receive protective equipment, that businesses follow federal and local safety protocols (complying with whichever is strictest), and that everyone in the workplace receives training on how to use the protective equipment and adhere to public health protocols. Even if a court dismisses a public nuisance lawsuit, an agency, such as OSHA, has the authority to issue fines against a business that fails to comply with its regulations.

Claims for Discrimination Are on the Rise

Employees are filing COVID-19 related lawsuits against their employers at a high rate. No single theory dominates these lawsuits, but trends have emerged. Employers returning to their centralized workplaces, and bringing employees back from their home-offices, may encounter claims that they are treating an employee, or a group of employees, better than others. The alleged favoritism can lead to lawsuits for illegal discrimination, even if the "unequal treatment" is perceived but not real, or real but accidental. Discrimination is based on "adverse action" taken against an employee in a "protected classification." Adverse action includes

termination, demotion, and the entire panoply of actions that adversely and materially affect a person's job performance or opportunity for advancement. Protected classifications in California include age, race, skin color, religion, disability (or perceived disability), sex (pregnancy or gender), sexual orientation, gender identity, military or veteran status, and marital status. A claim for discrimination can occur when an employer permits one or several employees to work from home but requires others to return to the office. An employee wishing to continue working from home, for health reasons for example, could claim the employer failed to reasonably accommodate a disability. Flipping that scenario, an employer may decide to require an employee to work from home (for example, if the business wishes to protect elderly employees or employees at higher risk of contracting COVID-19). That employee, if they wanted to return to the workplace, perhaps believing it presents greater opportunities, could sue for age or disability discrimination. Employers should remember to engage in the interactive process to determine whether an employee requires reasonable accommodation to perform "essential job functions." They should also evaluate whether decisions about returning employees to the worksite, or permitting them to remain at home, have disproportionate impacts on employees in protected classifications.

Lawsuits Alleging Retaliation, Based on Protected Classification or Whistleblowing, Are on the Rise

Employees who complain about discrimination or harassment (based upon protected classifications) and believe their employer subjected them to "adverse action" may sue for illegal retaliation. Dominating these claims are allegations that an employer has taken adverse action against an employee who complains about not receiving a required leave of absence. Whistleblowing is similar but has a technical legal meaning under the California Labor Code. A whistleblower is an employee who discloses to a government or law enforcement agency that the employer is violating or failing to comply with local, state, or federal rules or regulations. An employer may not retaliate against a whistleblower. Accusations that an employer uses inadequate safety measures dominate recent whistleblower lawsuits.

Employers must protect employees who complain about workplace misconduct. Employers should ensure their anti-retaliation policy is current and that it expressly protects employees who lodge complaints. A robust policy, and correct response to an employee's complaint, begins with a reminder that the business protects its employees from retaliation. The employer should remind the employee who complained that if they feel mistreated, they should immediately alert management, the human resources department, or both.

The Pandemic's Impact on Female Employees and Potential Gender Bias Claims

BY: BETH SCHROEDER

The global pandemic is leaving long-lasting battle scars on our families, our businesses, our mental health, and our way of life. One thing we also know, the pandemic does not play fair. Its impact has been disproportionately felt on underserved communities and people of color. We are now also seeing evidence of what many of us have feared – COVID-19 is causing greater harm to women workers than men.

Current Jobs Lost Based on Gender
Unemployment for women rose in December for the first time in eight months, according to numbers just released by the Department of Labor. Of the 140,000 jobs lost in the U.S., women accounted for all of them. Women lost 156,000 jobs, while men gained 16,000 jobs in December. Indeed, these data suggest that the pandemic has erased years of economic progress for women and workers of color, and economists say that these losses are poised to continue until COVID-19 is under control.

Long Term Effect on Compensation and other Workplace Benefits
The long-term impact of the pandemic on women's career advancement or compensation may be harder to determine. We know that women are more often tasked with the remote schooling responsibilities, some of which have been overwhelming these past months. Maybe all this impacts job performance, temporarily. Or maybe there is the perception that performance is impacted, even when it is not.

As employers, you cannot change the unemployment data. You can, however, be mindful of your own internal policies and practices. Review any planned terminations or rehires to ensure they do not reflect a disparate gender bias. Watch for potential or actual gender bias issues when making compensation or promotion determinations, especially during these difficult times. And remember to give a little extra grace to employees who may be struggling with the challenges of working through this pandemic. Thankfully, there is an end in sight.

Additional Coronavirus Assistance Has Arrived: More Loans, Simplified Forgiveness, and Monetary Grants

BY: STEVEN SCHMULENSON and JONATHAN RICHTER

The second-round stimulus package, the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act ("Economic Aid Act"), became law on December 27, 2020. It amends and adds more programs and money to the CARES Act. Below we've summarized key features of the Economic Aid Act, including an additional $284 billion for Paycheck Protection Program ("PPP") loans and a new $15 billion grant for movie theaters, stages and other live venues that have been almost entirely shut down during the pandemic. The Small Business Administration ("SBA") issued new guidance in the first week of January and more guidance is expected within the next few weeks.

Key Features

- PPP now expires March 31, 2021 instead of December 31, 2020.
- There are new categories of forgivable payroll and non-payroll costs.
- The loan forgiveness process has been simplified.
- Many businesses will be eligible for "Second draw" PPP loans, and some businesses which were blocked from the program in 2020 are now eligible for loans.
- The Save Our Stages Program ("SOS") makes grants (not loans) to certain shuttered venue operators, including live event spaces and movie theaters.

Forgiveness Extended to Additional Uses of PPP Funds

Borrowers must continue to use 60% of their received PPP funds for payroll costs and the remaining 40% of PPP funds on specified non-payroll costs during their 24-week covered period to maximize the forgiveness, but there are now more costs eligible for forgiveness in both categories and the eligibility applies to 2020 loans as well as new ones.

- **New forgivable payroll costs** payments for group life, disability, vision and dental insurance plans.
- **New forgivable non-payroll costs** operations expenditures (such as business software and cloud computing software to facilitate business operations), essential supplies, property damage costs caused by damage, vandalism and looting during 2020 not already covered by insurance or other compensation; and worker protection expenditures, including PPE and physical barriers to facilitate social distancing and other COVID-19 precautions as required by the U.S. Department of Health and Human Services, CDC, OSHA, and state and local government orders.

Simplified Forgiveness Application
Most PPP borrowers are not yet required to submit their forgiveness applications, so if your PPP loan is $150,000 or less, you might want to wait to use the new, shortened forgiveness application. The SBA will issue a simplified loan forgiveness application for all PPP loans of $150,000 or less. Documentation requirements have been greatly reduced and, in some cases, may be eliminated. The new application is expected to be only one page. The SBA has not yet released the new application but is expected to do so by mid-February, if not sooner.

"Second Draw" PPP Loan

The Economic Aid Act permits some businesses that have already gotten a PPP loan to apply for a **second PPP loan**. Borrowers that are eligible for a "second draw" PPP loan include:

- Businesses with not more than 300 employees;
- Businesses that can demonstrate a 25% reduction in gross receipts in any given quarter in 2020 compared to the same quarter in 2019; and
- Businesses that have spent or plan to spend all funds of their first PPP loan.

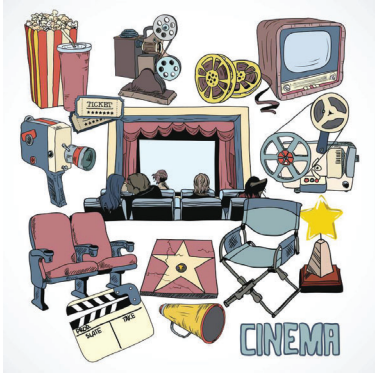
Loan Terms

Second draw PPP loans have the same terms as original PPP loans, except that second draw PPP loans cannot be larger than the *smaller* of $2,000,000 or 2.5X the average monthly payroll costs of the borrower (calculated in reference to either the one year prior to the making of the loan or calendar year 2019). Restaurants, hotels and other NAICS code 72 businesses can apply for a second draw loan with a cap of the *smaller* of $2,000,000 or 3.5X the average monthly payroll costs (calculated the same way as the 2.5X loans).

The SOS Program - Save Our Stages Grants

The Economic Aid Act has made $15 billion in SBA grants available to certain venue operators that have been largely shut down by the ongoing pandemic, including:

- Movie theaters;
- Live performing arts theaters and venues;
- Museums;
- Entertainment producers; and
- Talent agents and operators.



SOS-eligible businesses must have been fully operational as of February 29, 2020 and demonstrate, among other things, at least a 25% reduction in earned gross revenues for any given quarter in 2020 as compared to the same quarter in 2019. Applicants must also comply with SBA certification and documentation requirements.

In addition, an eligible business entity, as well as up to five of its affiliates under SBA affiliation rules, may apply for a grant, meaning that up to 6 different locations run by an operator can apply for and receive grants. SOS grant recipients cannot get a first or second draw PPP loan after December 27, 2020 but getting a PPP loan earlier in 2020 does not disqualify an eligible business for also applying for an SOS grant in 2021.

The SBA has not yet opened the application process for these grants as of the date of this newsletter. Once the program opens, the SBA will prioritize certain applicants by economic hardship as follows: first 14 days of the program, grants only to applicants whose revenue from April 1, 2020 to December 31, 2020 was 10% or less of its 2019 revenue for the same time; second 14 days, grants only to applicants whose revenue from April 1, 2020 to December 31, 2020 was 30% or less of its revenue for the same period in 2019. After the first 28 days, the SBA will award grants to the remaining eligible applicants.

Further Updates

For more details about any of these programs, please see the SBA website, or contact a Raines Feldman attorney for the latest information.

Please be sure to check out our COVID-19 Client Alert and Resource Center, https://www.raineslaw.com/covid-19, for further information about the Economic Aid Act as it becomes available.

COVID-19+ Notification Requirements[1]

	Cal/Osha	Workers' Comp Carrier	Local Public Health Department	Close Contacts of Infected Individual	Entire Workforce
Do I need to Notify?	-Must record work-related illness -Must report illness resulting in in-patient hospitalization if employee develops symptoms while at work. -Must report illness resulting in in-patient hospitalization even if symptoms develop outside of work if there is cause to believe the illness may be work-related. -For employers outside of California and subject to OSHA regulations, employer must report in-patient hospitalization if the hospitalization occurs due to a work-related incident. -For cases of COVID-19, the term "incident" means an exposure to COVID-19 in the workplace.	Yes. Employer must notify claims administrator with the following information (even when positive case is not work related): -An employee has tested positive; -The date the employee tested positive, which is the date the specimen was collected for testing; -The address or addresses of the employee's specific place of employment during the 14-day period preceding the date of the employee's positive test; -The highest number of employees who reported to work at the employee's specific place of employment in the 45-day period preceding the last day the employee worked at each specific place of employment.	Employers in Los Angeles County must report to County Health Department if a workplace has at least three reported or confirmed COVID-19 cases in the workplace within 14 days. For worksites outside of Los Angeles County, similar requirements apply. The California Department of Public Health states employers must notify the local health department in the jurisdiction where the workplace is located if there is a known or suspected outbreak in the workplace. An outbreak is defined as three (3) or more laboratory-confirmed cases of COVID-19 among workers who live in different households within a two-week period.	All employees who were in close prolonged contact (see definition below) with the infected individual during the infectious period be notified and asked to quarantine. Close prolonged contact is defined as a cumulative 15+ minutes within six-feet over a 24-hour period, or unprotected direct contact to body fluids starting from 48 hours of symptom onset or, if no symptoms, within 48 hours of specimen collection from the first positive COVID-19 test.	Employers having notice of a potential COVID-19 exposure provide a written notice to: -Employees and subcontractor employees who were at the worksite when a potentially infected individual was there and may have been exposed to COVID-19 as a result. The notice should be drafted to protect employee privacy. The notice should also include information on COVID-19 benefits the employee may be entitled to and the disinfection and safety plan the employer has implemented or plans to implement in accordance with guidance from the Centers for Disease Control and Prevention ("CDC").
When do I need to notify?	Reports to Cal/Osha must be made immediately, but not longer than eight (8) hours after the employer knows or with diligent inquiry would have known of the serious illness. Reports to OSHA must be made within 24 hours of knowing both that an employee has been hospitalized and that the reason for hospitalization was a work-related case of COVID-19.	Reports must be made in writing via electronic mail or facsimile within three (3) business days of learning of the exposure.	Immediately upon learning of a potential outbreak as defined above.	Immediately upon learning of possible exposure.	This notice must be provided within one (1) business day of the employer being notified of a potential exposure and may be done in "a manner that the employer normally uses to communicate employment-related information," such as personal service, mail, or text message.
Where to notify?	Report by email to caloshaaccidentreport@tel-us.com. Or find local reporting office here: https://www.dir.ca.gov/dosh/report-accident-or-injury.html		For Los Angeles only: Call (888) 397-3993 or (213) 240-7821 to report an outbreak.		

[1] The below are the reporting obligations in California. There may be additional or different reporting obligations for employees outside of California.

BUSINESS BRIEF:

CALIFORNIA QUARTERLY EMPLOYMENT LAW UPDATE

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Please note: The changes to California employment laws are numerous and significant. Please closely review the articles above and contact us with any questions or concerns.

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