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DATED: March 18, 2020  
TO: Rana Ghadban  
Hollywood Chamber of Commerce  
FROM: Derek S. Yee

**RE: COVID-19 – Recommended strategies for employers**

Rana, pursuant to your request, this memo and attachments provide general guidance for employers in California relating to the Coronavirus pandemic. Contact me if you have any specific issues.

**CDC INTERIM GUIDANCE FOR EMPLOYERS**

The Centers for Disease Control and Prevention (CDC) provided the following interim guidance is based on what is currently known about the coronavirus disease 2019 (COVID-19). The CDC will update this interim guidance as needed and as additional information becomes available.

To prevent stigma and discrimination in the workplace, use only the guidance described below to determine risk of COVID-19. Do not make determinations of risk based on race or country of origin, and be sure to maintain confidentiality of people with confirmed COVID-19. There is much more to learn about the transmissibility, severity, and other features of COVID-19 and investigations are ongoing. Updates are available on CDC's COVID-19 web page. (<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>)

**Actively encourage sick employees to stay home:**

- Employees who have symptoms of acute respiratory illness are recommended to stay home and not come to work until they are free of fever (100.4° F [38.0° C] or greater using an oral thermometer), signs of a fever, and any other symptoms for at least 24 hours, without the use of fever-reducing or other symptom-altering medicines (e.g. cough suppressants). Employees should notify their supervisor and stay home if they are sick.
- Ensure that your sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.
- Talk with companies that provide your business with contract or temporary employees about the importance of sick employees staying home and encourage them to develop non-punitive leave policies.
- Do not require a healthcare provider's note for employees who are sick with acute respiratory illness to validate their illness or to return to work, as healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely way.

- Employers should maintain flexible policies that permit employees to stay home to care for a sick family member. Employers should be aware that more employees may need to stay at home to care for sick children or other sick family members than is usual.

**Separate sick employees:**

- CDC recommends that employees who appear to have acute respiratory illness symptoms (i.e. cough, shortness of breath) upon arrival to work or become sick during the day should be separated from other employees and be sent home immediately. Sick employees should cover their noses and mouths with a tissue when coughing or sneezing (or an elbow or shoulder if no tissue is available).

**Emphasize staying home when sick, respiratory etiquette and hand hygiene by all employees:**

- Place posters that encourage staying home when sick, cough and sneeze etiquette, and hand hygiene at the entrance to your workplace and in other workplace areas where they are likely to be seen.
- Provide tissues and no-touch disposal receptacles for use by employees.
- Instruct employees to clean their hands often with an alcohol-based hand sanitizer that contains at least 60-95% alcohol, or wash their hands with soap and water for at least 20 seconds. Soap and water should be used preferentially if hands are visibly dirty.
- Provide soap and water and alcohol-based hand rubs in the workplace. Ensure that adequate supplies are maintained. Place hand rubs in multiple locations or in conference rooms to encourage hand hygiene.
- Visit the coughing and sneezing etiquette and clean hands webpage for more information.

**Perform routine environmental cleaning:**

- Routinely clean all frequently touched surfaces in the workplace, such as workstations, countertops, and doorknobs. Use the cleaning agents that are usually used in these areas and follow the directions on the label.
- No additional disinfection beyond routine cleaning is recommended at this time.
- Provide disposable wipes so that commonly used surfaces (for example, doorknobs, keyboards, remote controls, desks) can be wiped down by employees before each use.

**Advise employees before traveling to take certain steps:**

- Check the CDC's Traveler's Health Notices for the latest guidance and recommendations for each country to which you will travel. Specific travel information for travelers going to and returning from China, and information for aircrew, can be found at on the CDC website.
- Advise employees to check themselves for symptoms of acute respiratory illness before starting travel and notify their supervisor and stay home if they are sick.
- Ensure employees who become sick while traveling or on temporary assignment understand that they should notify their supervisor and should promptly call a healthcare provider for advice if needed.
- If outside the United States, sick employees should follow your company's policy for obtaining medical care or contact a healthcare provider or overseas medical assistance company to assist them with finding an appropriate healthcare provider in that country. A U.S. consular officer can help locate healthcare services. However, U.S. embassies, consulates, and military facilities do not have the legal authority, capability, and resources to evacuate or give medicines, vaccines, or medical care to private U.S. citizens overseas.

### **Additional Measures in Response to Currently Occurring Sporadic Importations of the COVID-19:**

Employees who are well but who have a sick family member at home with COVID-19 should notify their supervisor and refer to CDC guidance for how to conduct a risk assessment of their potential exposure. If an employee is confirmed to have COVID-19, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the Americans with Disabilities Act (ADA). Employees exposed to a co-worker with confirmed COVID-19 should refer to CDC guidance for how to conduct a risk assessment of their potential exposure.

### **FREQUENTLY ASKED QUESTIONS**

#### **CAN I ASK EMPLOYERS TO LEAVE THE WORKPLACE AND STAY HOME IF I SUSPECT THEY HAVE COVID-19?**

If an employee is exhibiting symptoms related to COVID-19 (i.e., cough, shortness of breath, fever) you may ask the employee to leave work and stay home until the employee is symptom-free. While the CDC recommends a person recovering from the flu stay home until at least 24 hours after the person is symptom free, with COVID-19, the CDC recommends consulting with a healthcare provider and state/local health departments to determine when it is OK to return to work.

#### **WHAT IF THE EMPLOYEE IS NOT EXHIBITING SYMPTOMS RELATED TO COVID-19, BUT RECENTLY RETURNED FROM A COUNTRY WITH A CDC WARNING?**

If an employee recently returned from a country with “*High Risk*,” you should ask the employee to remain at home for a minimum of 14 days after the employee returns from travel. For an up-to-date list of “*High Risk*” countries visit <https://wwwnc.cdc.gov/travel> and <https://www.cdc.gov/coronavirus/2019-ncov/travelers/after-travel-precautions.html>.

#### **DO I HAVE TO PAY AN EMPLOYEE I ASK TO LEAVE WORK OR STAY HOME DUE TO COVID-19?**

Non-exempt employees: If the employee reports to work and is sent home before working a full shift, you must pay the employee at least two hours or no more than four hours of reporting time pay. If the employee stays home and does not report to work, you can ask, but not require, the employee if they wish to use paid sick pay. If the employee exhausts sick pay, PTO, or vacation pay benefits and the employee is still ill, we suggest you consider a reduced hourly rate or continue paying the normal hourly rate for a certain time period. This will encourage employees to remain home and not return to work prematurely. However, once all legally required paid time off is exhausted, you are not obligated to pay non-exempt employees if they are not working for you. (However, federal legislation on this issue (H.R. 6201) is pending, see below.) Whatever policy you adopt, we suggest you apply it uniformly across your workforce to reduce the risk of discrimination claims based on protected characteristics. Of course, if an employee is able and permitted to work from home, the employee should be compensated for all hours worked (see also Can I Have My Employees Work Remotely from Home? below).

Exempt employees: You must pay exempt employees who are ready and willing to work, but asked to stay home during a workday. In contrast, employers are not obligated to pay exempt employees if they perform no work for an entire “*workweek*,” as long as they still earn the requisite minimum monthly salary (2x the state’s minimum wage on a salaried basis). Note that if H.R. 6201 passes (see below), employees exposed to COVID-19 or have symptoms of COVID-19 may be entitled to additional paid sick leave and protected time off, partially with pay.

**IF AN EMPLOYEE IS DIAGNOSED WITH COVID-19, SHOULD I INFORM EVERYONE AT THE SAME WORKPLACE?**

If an employee is confirmed to have COVID-19, you should advise other employees who could potentially have had contact with that employee about possible exposure to COVID-19. You may not disclose the name of the affected employee and must take all possible steps to maintain the confidentiality of the affected employee. However, some employees will consent to the disclosure of their identity, in order to help their co-workers avoid exposure. For questions or concerns about additional steps to take due to potential exposure to COVID-19, contact the CDC by phone (800-232-4636) or email (<https://wwwn.cdc.gov/dcs/ContactUs/Form>).

**WHAT SHOULD I DO IF AN EMPLOYEE NO LONGER WANTS TO WORK WITH ANOTHER EMPLOYEE OUT OF FEAR OF CONTRACTING COVID-19?**

If the fear is based on legitimate factors (e.g., the other employee is exhibiting possible COVID-19 symptoms), you should assess whether the employee with symptoms should be separated from other employees or sent home. However, you should not comply with requests based on non-legitimate factors such as race; employers have legal obligations to protect its employees against unlawful harassment, discrimination and retaliation.

**CAN I REQUIRE AN EMPLOYEE TO PROVIDE A DOCTOR'S NOTE IF THE EMPLOYEE STAYS HOME DUE TO SYMPTOMS CONSISTENT WITH COVID-19?**

California's paid sick leave law permits employees to give notice of sick leave either verbally or in writing. This has been interpreted to mean that employers may not condition the use of accrued paid sick leave on an employee providing medical certification. If the request for a doctor's note is not related to paid sick leave, it is permissible (e.g., medical certifications are allowed for FMLA/CFRA leave). However, the CDC recommends not requiring a doctor's note at this time since health care providers are overwhelmed.

**IF SCHOOLS ARE CLOSED AND AN EMPLOYEE REQUESTS TIME OFF TO CARE FOR A CHILD AT HOME, DO I HAVE TO GRANT THE REQUEST?**

California law prohibits employers with 25 or more employees from discharging or discriminating against an employee who is a parent of one or more children for taking off up to 40 hours each year to *"address a child care provider or school emergency, if the employee gives notice."* A *"parent"* is defined to include a *"parent, guardian, stepparent, foster parent, or grandparent of, or a person who stands in loco parentis to, a child."* The closing of a school due to COVID-19 would be considered a *"school emergency,"* which is defined to include the *"Closure or unexpected unavailability of the school..."* Please note the CDC encourages employers to maintain flexible policies that permit employees to stay home to care for a sick family member since it is anticipated that more employees will need to stay home to care for sick children or other sick family members than is usual. Further, if H.R. 6201 passes (see below), eligible employees may be entitled to protected time off and paid sick leave to care for a child whose school was closed.

**IS THERE ANY DOCUMENTATION I SHOULD PROVIDE TO AN EMPLOYEE WHO HAS BEEN DIAGNOSED WITH COVID-19 OR NEEDS TO TAKE TIME OFF TO CARE FOR A FAMILY MEMBER DIAGNOSED WITH COVID-19?**

If an employee is unable to work due to having or being exposed to COVID-19, (certified by a medical professional) the employee can file for State Disability Insurance (SDI) with the California Employment Development Department (EDD). You should provide SDI information to affected employees, which

consists of the following brochure: Disability Insurance Provisions (DE 2515). If the employee is taking time off to care for an ill family member; the employee can seek EDD benefits from the Paid Family Leave program. You should provide this brochure: Paid Family Leave Benefits (DE 2511).

### **IS THERE ANY OTHER DOCUMENTATION I SHOULD PROVIDE TO MY EMPLOYEES REGARDING COVID-19?**

Although not required, attached are the following CDC's Notices:

- Coronavirus disease 2019 (COVID-19) and you
- What to do if you are sick with coronavirus disease 2019 (COVID-19)
- Share facts about COVID-19
- Wash your hands
- Symptoms of Coronavirus Disease 2019
- Stop the Spread of Germs

The federal government may also require additional notices, if H.R. 6201 passes (see below).

### **CAN I REQUIRE MY EMPLOYEES TO PURCHASE HAND SANITIZER, CLEANING SUPPLIES, TISSUE AND OTHER PRODUCTS DESIGNED TO PREVENT THE SPREAD OF ILLNESS?**

It is best for the employer to provide these products and not require employees to purchase them. Making these products readily available will increase the chance your employees will use them. If you do require employees to purchase these products, you should make sure to reimburse the purchases or else you will risk being in violation of the Labor Code.

### **DOES WORKERS' COMPENSATION APPLY TO EMPLOYEES WHO CONTRACT COVID19?**

If an employee becomes infected as a result of their work (e.g., health care workers, employees working in high risk areas), Workers' Compensation may likely apply. The Department of Industrial Relations (DIR) instructs employers to send employees with increased risk of becoming infected with Valley Fever (an infectious fungus) to a workers' compensation healthcare provider. The DIR may likely take a similar approach with respect to employees with increased risk of infection from COVID-19.

### **COVID-19 AFFECTED MY BUSINESS AND I NEED TO MAKE CHANGES FOR FINANCIAL REASONS. CAN I REDUCE EMPLOYEE HOURS OR TEMPORARY LAY OFF EMPLOYEES?**

Employees in California are generally "at-will." This means an employer may change the terms and conditions of employment (to the extent permitted by law) with or without notice or cause, unless a contract, collective bargaining agreement, or terms of employment state otherwise. Employees who experience a reduction in hours or shut down due to COVID-19 can file an Unemployment Insurance (UI) claim. Per the EDD, employees who are temporarily unemployed due to COVID-19 and expected to return to work with their employer within a few weeks are not required to actively seek work each week. However, they must remain able and available and ready to work during their unemployment for each week of benefits claimed and meet all other eligibility criteria. Eligible individuals can receive benefits that range from \$40-\$450 per week.

The EDD encourages employers who are planning a closure or major layoffs because of COVID-19 to contact the Rapid Response program which may help avert potential layoffs and provide immediate onsite services to assist employees facing job losses.

Employers who are covered under the federal or state Worker Adjustment and Retraining Notification (WARN) Acts may be required to provide advance notice to all affected employees and to other parties prior to plant closings or mass layoffs. In California, the WARN Act applies to an employer that employs or has employed in the preceding 12 months 75 or more employees. The federal WARN Act applies to employers that employ 100 or more employees. There are a number of rules, procedures, as well as exceptions to the rules.

### **CAN I HAVE MY EMPLOYEES WORK REMOTELY FROM HOME?**

Yes, but you should consider the following issues before doing so:

- **Necessary business expenses:** If your employees need to use the internet and/or phone to work remotely, the employer will need to reimburse the employee for the expense the employee incurs to use the internet and/or phone for business purposes. If working from home requires the use of certain equipment (e.g., a computer, printer, etc.), and the employee does not already own the equipment, the employer must provide the equipment or reimburse the employee for the cost of the equipment.
  
- **Tracking hours:** Do you have a reliable method to track hours worked and meal periods for your non-exempt employees?
  - o If employees cannot log work hours and breaks remotely, consider creating a form employees can use to log their time and have them return their form (either every day, week, or pay period), so you can address any issues as they arise.
  - o Provide employees with a copy of your meal, rest and overtime policies to reiterate the importance of complying with these policies while working remotely.
  - o Instruct non-exempt employees to perform work only during their regularly-scheduled workday and instruct managers to only communicate with non-exempt employees during their regular schedule.

### **I AM EXPERIENCING A DOWNTURN IN BUSINESS DUE TO COVID-19. CAN I REDUCE THE SCHEDULES AND WAGES/SALARY FOR MY EMPLOYEES?**

Non-Exempt: You can reduce the hours and rate of pay provided you pay at least minimum wage for all hours worked. For employees working within the City of Los Angeles or the unincorporated areas of Los Angeles County, the current hourly minimum wage is: \$13.25 for small businesses (25 or less employees) and \$14.25 for large employers (26 or more employees). Other cities have other minimum wage rates. If your employees do not work in a location with its own minimum wage, then at a minimum your employees must be paid the State's minimum wage (\$12.00 for smaller employers of 25 or less employees; and \$13.00 for larger employers of 26 or more employees).

Exempt: The answer is not clear with exempt employees since there is no California court decision or statute that addresses this specific issue. However, the California Division of Labor Standards Enforcement ("DLSE") issued an Opinion Letter involving a similar issue in response to an inquiry from a business experiencing a downturn in business in 2009. The DLSE opined that reducing an exempt employee's scheduled work days with a corresponding reduction in salary was "not prohibited under California law" so long as: (1) the employee still meets the salary test by earning a monthly salary equivalent to no less than two times the state minimum wage; and (2) the employee continues to satisfy the duties test for the applicable exemption. While the Opinion Letter suggests a temporary reduction in work schedule and salary is not prohibited where a business is experiencing economic difficulties due

to a severe economic turndown (something that many businesses are now experiencing), it is important to note the following:

- The DLSE opinion is not binding on California courts. A court could come to a different conclusion and find a reduction in salary is prohibited.
- The DLSE opinion is based the specific facts presented to it by the employer, including: (1) the employer was experiencing significant economic difficulties due to the then-current severe economic downturn; (2) the employer wanted to implement the change to avoid layoffs; (3) the employer intended to restore the full schedule and salary as soon as business conditions permitted; and (4) the employer did not intend to adjust the salary any more frequently than described. You can review the Opinion here: <https://www.dir.ca.gov/dlse/opinions/2009-08-19.pdf>.

An alternative approach: For exempt employees who need to stay at home but cannot work a regular fulltime schedule, e.g., due to illness or to care for another, an employer can consider transitioning employment status from exempt to non-exempt on a temporary basis. If you choose to make this change, you must pay the employee on an hourly basis, and comply with all laws applicable to a non-exempt hourly employee (e.g., provide meal and rest breaks, pay overtime, record hours, etc.)

#### **WHAT IS THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT (H.R. 6201)?**

On March 14, 2020, the U.S. House of Representatives passed the Families First Coronavirus Response Act, a bipartisan bill which responds to the COVID-19 outbreak by providing, among other benefits, paid sick leave and additional protections to employees affected by COVID-19. See the attached summary of the Families First Coronavirus Response Act.

#### **LINKS TO RESOURCES FOR INFORMATION REGARDING COVID-19**

- Employment Development Department (EDD): [https://www.edd.ca.gov/about\\_edd/coronavirus2019/faqs.htm](https://www.edd.ca.gov/about_edd/coronavirus2019/faqs.htm)
- California Department of Industrial Relations (DIR): <https://www.dir.ca.gov/dlse/2019-NovelCoronavirus.htm>
- U.S. Department of Labor (DOL): <https://www.dol.gov/coronavirus>
- Occupational Safety and Health Administration (OSHA): <https://www.osha.gov/SLTC/covid-19/>
- The Centers for Disease Control (CDC): <https://www.cdc.gov/coronavirus/2019-ncov/community/index.html>
- World Health Organization (WHO): <https://www.who.int/emergencies/diseases/novelcoronavirus-2019>

#### **DISCLAIMER**

This memo is intended to provide accurate, general information regarding legal rights relating to the coronavirus and employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, and specific facts regarding a situation may differ, the Hollywood Chamber of Commerce and the Law Offices of Derek S. Yee cannot ensure the information in this memo is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.