Coronavirus Laws and Your Dealership: Part III

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What are we covering today?

- Current status of dealership operations.
- Workers' compensation issues.
- State, local, and federal health requirements.
- Employment issues involving COVID-19.
- Federal government benefits (Paid Leave, PPP Loans).

This presentation is indented for educational purposes and is not legal advice. This presentation is designed to provide a brief overview of many recent legal developments. For legal advice specific to your dealership, contact competent counsel.

Free Online Resources for CNCDA Members



Statewide Operation and Health Beduirements, All dealerships in California should review and implement the statewide quidance on COVID-19 dealership operations. (Click <u>http:</u>) All dealerships should post a copy of the state COVID-19 checklist to demonstrate that they are reducing the risk and are open for business, (Click <u>terms</u>).

Local Health Requirements. Onlies and counties throughout California have adopted restrictions on business operations that are designed to promote public safety. These restrictions vary, but they include face mask, employee screening and social distancing requirements. Most dealerships in California will need to implement and post the social distancing protocol required in their local particulation. LA County dealers should note that they must implement a dealership specific reopening health protocol. (Click <u>merch</u>) For the most current information, visit your local particulation's website.

https://www.cncda.org/dealer-coronavirus-resources/



Legal Updates

To incurve copies of documents and any legal advice letters, to be emailed to you here of charge, you must either your information and winty theil you and a direct of it ms, Broga A Peetins LLP, a current user of 141 (1910), autoical a member of the Cathorna New Cat Dealers Association, the Cathorna Mutary to Denetry Association, the Cathorna New Cathorna New Cathorna Recreational White Denetry Association (1910).

If you have previously registered, you can login here

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REGISTER NOW

https://www.employerlawyers.com/legal-updates/

CNCDA COVID-19 Member Toolkit

 Contains many helpful resources on issues discussed in this webinar

Available on CNCDA Comply

MEMBER TOOLKIT



Restarting California's New Car Dealerships in the Wake of COVID-19

OVERVIEW

This CNCDA Member Toolkit is designed to help dealerships implement new protocols and procedures, ensuring the health and safety of consumers and employees, in the wake of the COVID-19 crisis. This document is not intended as legal advice, nor is it intended to be comprehensive regarding all COVID-19 compliance matters. Instead, this toolkit is designed as an informational checklist, which includes key resources for critical areas that dealerships need to be aware of as they reopen to the public and begin to resume day-to-day operations. Dealers should also note that while CNCDA intends to use its best efforts to update this document, COVID-19 compliance issues continue to change quickly. For legal advice, contact competent counsel.

Key Resources

- State of California Industry Guidance and Checklist on Auto Dealership COVID-19 Operations
- Cal/OSHA Guidance on Requirements to Protect Workers from Coronavirus
- Centers for Disease Control and Prevention (CDC) <u>Interim Guidance for</u> Businesses and Employers to Plan and Respond to COVID-19

GENERAL REQUIREMENTS

- Oesignate someone at your dealership that is responsible for COVID-19 health and safety compliance.
- Purchase equipment necessary to comply with health requirements (e.g., face masks, touchless body thermometers, hand sanitizers, disinfectant wipes, etc.).

Part 1 STATUS OF DEALERSHIP OPERATIONS

Current status of dealership operations

- Service and Parts Departments permitted in all jurisdictions
- Vehicle Sales Resuming in-person sales operations in most jurisdictions
 - The statewide order allows in-person vehicle sales, but dealers must adhere to health guidance (discussed later).
 - Most counties are allowing dealers to open showrooms and sales lots, albeit subject to social distancing protocols and other operational requirements
- Not Business as usual. Many new requirements and restrictions.

Major Local Exceptions

Bay Area - Outdoor Sales

- Dealerships in the Bay Area (Alameda, Contra Costa, Marin, San Francisco, and Santa Clara Counties) may only conduct in-person sales if they are an "outdoor business"
- An "outdoor business" is a business where "more than 50% of the total floor area regularly used for product sales was outdoors prior to March 16, 2020."
- All vehicle sales activities involving members of the public must be done in outdoor spaces where social distancing between all persons can be observed.

LA County – Reopening Protocol for Car Dealerships

Allows showrooms to open, but dealerships must adhere to operations protocol specific to dealerships

DMV Memo on Online Sales

- DMV outlined compliance requirements for online vehicle sales and off-site deliveries. (OLIN 2020-04)
- Dealers engaging on online sales and/or off-site deliveries are strongly encouraged to review the two-page DMV memo.
- Mirrors guidance CNCDA previously issued in memo on online sales by Arent Fox LLP (available on CNCDA Comply)



Occupational Licensing Industry News OLIN 2020-04 Online Vehicle Sales and Off-Site Delivery

Effective Immediately

Purpose

Due to the COVID-19 outbreak, a *Proclamation of a State of Emergency* was issued by California Governor Gavin Newsom. On March 19, 2020, Executive Order N-33-20 was issued which exempted from the stay at home order "essential critical infrastructure workers" needed to maintain continuity of essential critical infrastructure designated by the State Public Health Officer.

On April 28, 2020, in accordance with the Order, the State Public Health Officer designated workers critical to the manufacturing, distribution and sales of vehicles as essential critical infrastructure workers, subject to adhering to the public health guidelines issued by the California Department of Public Health (CDPH).

This memorandum clarifies the requirements for online vehicles sales and off-site delivery of a vehicle to a purchaser during this outbreak period.

Online Sales Transactions and Off-Site Vehicle Delivery

The Vehicle Code (VC) requires vehicle sales be conducted through a licensed location. This requirement applies to brick and mortar vehicle dealerships transactions and to online sales transactions conducted through brick and mortar dealer licensees. The vehicle offered for sale by the dealership must be present at the dealership's licensed location at the time of the sales transaction or be available to the dealer directly from the manufacturer or distributor of the vehicle at the time of the advertisement or the offer of the vehicle for sale. The sale takes place at the licensed location and meets the requirements of VC §11714(b). Accordingly, the dealership is permitted to deliver the vehicle to the customer at an off-site location in order to complete the sale through the licensed location as required by VC §5901(d). The dealer and salesperson must comply with all sales related requirements of the VC before, during, and after the sale of the vehicle.

Compliance Requirements

- · All products must be contracted for sale prior to the delivery of the vehicle.
- All terms of the transaction must be agreed upon prior to the delivery of the vehicle at an off-site location. Negotiations may not be conducted at the purchaser's delivery location.
- All contracts must be signed by the dealership before delivery of the vehicle at the
 off-site location. The purchaser may sign the contract at the time of delivery.
- Any person engaged in the negotiation and sale of the vehicle must be a licensed salesperson.
- A copy of all notices to the consumer required by the VC and the *Civil Code* must be provided to the purchaser before the purchaser executes all sales related documents, such as the notice of the right to inspection, etc.

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Occupational License Renewals

- DMV launched portal to allow vehicle salespersons to renew licenses online. (<u>https://virtual.dmv.ca.gov/olonline</u> renewal/)
- Occupational license renewals can be also be completed by mail.

CAON DEMI

VEHICLE SALESPERSON RENEWAL OR REINSTATEMENT

Start The Vehicle Salesperson Renewal Or Reinstatement Form

Start

Before you begin:

- In order to renew or reinstate a vehicle salesperson license, you will need to complete a validation process consisting of the salesperson license number, DL/ID number, and full name as represented on the salesperson license card, prior to receiving access to the online application.
- Have your salesperson license card available.

To renew a salesperson license online, the expiration date must be within six (6) months

To reinstate a salesperson license online, the license must be expired for a period of less than three (3) years, with no prior detrimental history such as criminal convictions or previous departmental action within the past ten (10) years.

Required fields to be completed: name, date of birth, email address, and phone number.

Translate

Franchise Issues

- Closely review any new agreement from the OEM
- Example GM Clean Program
 - Ostensibly a marketing opportunity for dealerships to promote cleanliness
 - Requires dealers to indemnify GM in lawsuits
 - CNCDA sent GM a letter expressing our concern



Part 2 Workers' Compensation Issues

Workers' Compensation

- Under May 6, 2020, Executive Order from Governor Newsom, workers who contract COVID–19 after working outside the home are presumed to have contracted the disease while working, triggering Workers' Compensation liability
 - This presumption applies to an employee who tests positive for COVID–19 within 14 days after the employee has performed labor or services at the employer's direction outside of the employee's home or residence.

The presumption is rebuttable

- May be overturned based on evidence of other transmission vectors (e.g., employee exposed through family member)
- But denial of coverage must be made within 30 days after the claim is filed, or the only evidence available to rebut the presumption will be that discovered subsequent to the 30-day period.

Workers' Compensation

- Accepted claims for COVID–19 under Workers' Compensation will trigger all available benefits under Workers' Compensation, including full hospital, surgical, medical treatment, disability indemnity, and death benefits.
 - Temporary Disability Benefits will be available without waiting period, although paid sick leave benefits available during the pandemic (e.g., Paid Sick Leave under the FFCRA) must be exhausted before Temporary Disability Benefits will be paid.
 - Employee diagnosed must be recertified for Temporary Disability Benefits every 15 days for the first 45 days after diagnosis.

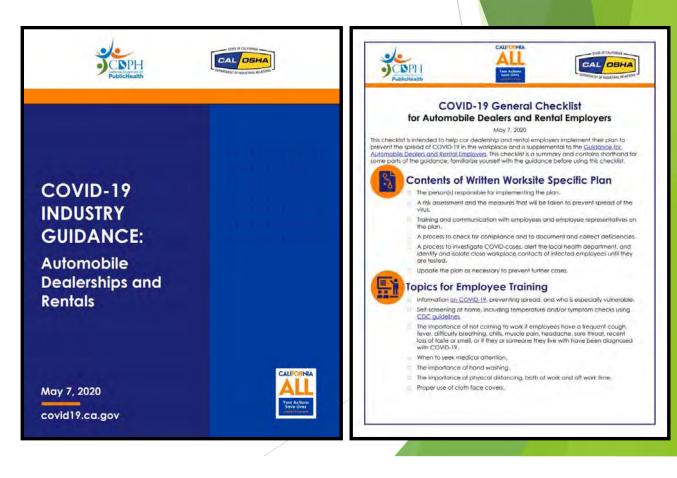
Workers' Compensation

- Impacts of presumption
 - Experts have predicted that this new order will likely result in significant additional costs to Workers' Compensation insurers, who will pass these costs on to employers through increased premium costs.
 - To limit these costs, employers should work diligently to protect workplaces against transmission, through increased sanitation and separation practices. In addition, employers must promptly respond to COVID–19 claims in Workers' Compensation in order to offer timely rebuttal to the presumption that the transmission happened at work.

Part 3 State, Local, and Federal Health Requirements

Statewide COVID-19 Industry Guidance and Checklist: Automobile Dealerships and Rentals

- Issued May 7, 2020 by State Department of Public Health and Cal/OSHA
- All dealerships in California should review the guidance and post a copy of the corresponding checklist.
- https://covid19.ca.gov/ind ustry-guidance/



Required Checklist for Dealers

- Checklist Overview:
 - Create a COVID-19 Compliance Team and name the Team Leader and assign duties
 - Written Worksite Prevention and Response Plan
 - Much Like an Injury and Illness Prevention Program for COVID-19
 - Sample Provided Free of Charge by Fine, Boggs & Perkins LLP, CNCDA and HR Hotlink
 - Required Employee Training
 - Manager (Supervisor)
 - Employee
 - Sample Provided Free of Charge by Fine, Boggs & Perkins LLP, CNCDA and HR Hotlink
 - Daily Individual Symptom Screening
 - Sample Provided Free of Charge by Fine, Boggs & Perkins LLP, CNCDA and HR Hotlink
 - Cleaning and Disinfecting
 - Physical (Social) Distancing

Create COVID-19 Team

The dealership should establish a COVID-19 Prevention and Response Team led by the Dealership's COVID-19 Team Captain. The Captain and the Team are to carry out the procedures and practices of this Plan to provide for the well-being of our employees, customers and vendors.

Team Captain - Has overall responsibility to oversee the Dealership's Prevention and Response Plan, which includes:

Social Distancing Protocol- Ensure that social distancing guidelines for employees and customers are adhered to.

Sanitization & Disinfection – Ensure that daily and periodic disinfection, including routine and deep cleaning procedures are performed at the dealership.

Communication & Training – Works to manage all related communications, training and response to any COVID-19 situation.

Protective Equipment and Supplies - Secures all necessary equipment and supplies to protect employees and customers.

E.g., COVID-19 Team you can contact with any questions or concerns

- Team Captain General Manager ______
- Sanitation/Disinfection _____
- Protective Equipment and Supplies ______
- Notifications/Communications ______
- Human Resources ______

Implement a Written COVID-19 Dealership Prevention and Response Plan

- ▶ The team members and leader responsible for implementing the plan.
- A risk assessment and the measures that will be taken to prevent spread of the virus.
- Training and communication with employees and employee representatives on the plan.
- > A process to check for compliance and to document and correct deficiencies.
- A process to investigate COVID-cases, alert the local health department, and identify and isolate close workplace contacts of infected employees until they are tested.
- Update the plan as necessary to prevent further cases.
- A Sample Plan will be provided free of charge so you don't have to recreate the wheel.

Prevention Plan

HR Hotlink Provides the automated solution now for WRITTEN PREVENTION AND RESPONSE PLAN



Employee Training

- Information on COVID-19, preventing spread, and who is especially vulnerable.
- How to identify COVID-19 symptoms and what to do.
- Self-screening at home, including temperature and/or symptom checks using CDC guidelines.
 - The importance of not coming to work if employees have a frequent cough, fever, difficulty breathing, chills, muscle pain, headache, sore throat, recent loss of taste or smell, or if they or someone they live with have been diagnosed with COVID-19.
 - ▶ When to seek medical attention.
- ▶ The importance of hand washing, disinfecting and sanitizing work areas.
- ▶ The importance of physical distancing, both at work and off work time.
- Proper use of cloth face covers and gloves.

Required Training

HR Hotlink Provides the automated solution now for manager and employee training

COVID-19 MANAGEMENT TRAINING EMPLOYEE TRAINING



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Individual Screening and Responsibility

- Symptom screenings and/or temperature checks.
- Encourage workers who are sick or exhibiting symptoms of COVID-19 to stay home.
- Encourage frequent handwashing and use of hand sanitizer.
- If equipment is required, employers may be required to provide it under the Labor Code.
- Use a symptom check list– available through HR Hotlink, Fine, Boggs & Perkins LLP and CNCDA



Recognizing the Symptoms

- We MAY have exposure! Now what?
 - ▶ EEOC has relaxed certain employee privacy rules in light of the pandemic.
 - Employees must self-check if they have symptoms of COVID-19:
 - Dry cough
 - Fever
 - Shortness of breath or difficulty breathing

- Sore throat
- New loss of taste or smell
- Repeated shaking with chills

- Muscle pain
- Headache
- Chills

- Temperature checks?
 - > You can test an employee's body temperature or ask employees to self-check.
 - ▶ We recommend the self-check for various legal reasons.
 - Consider it mandatory.
 - Information should be treated as a confidential medical record.
 - Other limits on medical examinations still apply.
 - However, a sample Symptoms Check form is available at <u>www.employerlawyers.com/legal-updates/</u> and on HR Hotlink for subscribers. You can also download one <u>here</u>.
- Continue to keep in mind that many who may spread the virus are asymptomatic, so do not relax other social distancing practices.

Dealers must require self-administered symptoms checks of CDC-recognized symptoms.

SYMPTOMS

Cough Or Shortness Of Breath/Difficulty Breathing

Fever Of 100.4 Degrees Or Higher

Repeated Shaking With Chills

Chills

Muscle Pain (new or worsening)

Headache

Sore Throat

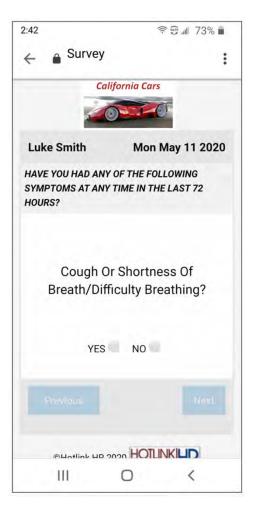
New Loss Of Taste Or Smell

Must have way to track and store results and to prove you were doing it, while maintaining privacy and confidentiality of medical information



HR Hotlink Provides the automated solution now.

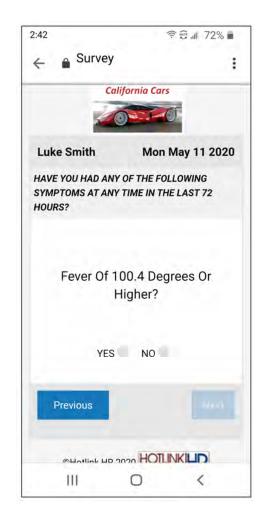
 Right from Employee's own iPhone or Android device





HR Hotlink Provides the automated solution now.

All the symptoms reviewed and selfadministered





HR Hotlink Provides the automated solution now.

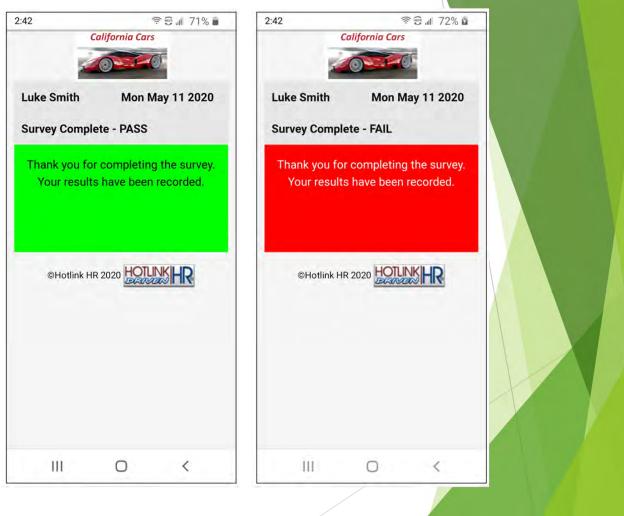
Summary of Symptoms





- HR Hotlink Provides the automated solution now.
- Private with confidential results stored encrypted
- Available to all auto dealers in California only!

www.hrhotlink.com



Protective Masks/Face Coverings

- Updated guidance has shifted from discouragement, to neutral, to recommended, and now in many cases to mandatory.
- The new Industry-Specific Guidance includes broad language "strongly recommending" masks when employees are in the vicinity of others, and directing their use while at work; in offices, showrooms, or other locations; and while in vehicles.
 - Many local jurisdictions go further in requiring masks
 - Even if your jurisdiction does not (yet) mandate masks or face coverings, implementing them will further demonstrate your dealership's commitment to the common goal of social distancing.
- Do not recommend or mandate respirators or similar masks, as those remain in short supply for health-care workers.
- Communicate frequently to customers that they should use face masks/covers.
 - Some counties require them so you should go ahead and plan on it.

Disposable Gloves

- Provide disposable gloves to workers using cleaners and disinfectants when required.
 - Consider gloves as a supplement to frequent hand washing for other cleaning, tasks such as handling commonly touched items or conducting symptom screening.
 - ▶ Gloves are not a substitute for handwashing.
- ▶ Train employees on proper use and handling of disposable gloves.

Cleaning and Disinfecting Protocols

- Perform thorough cleaning in high traffic areas.
 - ► Frequently disinfect commonly used surfaces.
- Clean and sanitize shared equipment between each use.
 - Clean touchable working surfaces between shifts or between users, whichever is more frequent.
- Equip terminals, desks, and help counters with proper sanitation products, including hand sanitizer and sanitizing wipes, and provide personal hand sanitizers to all staff assisting customers.
 - Provide hand sanitizer dispensers throughout showrooms, lobbies, and service areas, for use by customers and employees.
- Ensure that sanitary facilities stay operational and stocked at all times.

Cleaning and Disinfecting Protocols

- Use products approved for use against COVID-19 on the Environmental Protection Agency (EPA)-approved list and follow product instructions and Cal/OSHA requirements.
- Dedicate employees to sanitize vehicles returning from rental and test drives as well as other high-touch surfaces in lobbies, showrooms, and offices.
- Use protective barriers such as disposable mats and seat covers when using vehicles, such as during test drives and moving returned vehicles.
- Adjust or modify store hours to provide adequate time for regular deep cleaning.
- Install hands-free devices if possible.
- Encourage the use of debit or credit cards by customers.
- Consider upgrades to improve air filtration and ventilation.

Physical Distancing Guidelines

- Implement measures to separate all persons by at least six feet using measures such as physical partitions or visual cues (e.g., floor markings, colored tape, or signs to indicate to where workers and/or employees should stand).
- Install barriers such as Plexiglas, where feasible, in areas where physical distancing cannot be maintained.
- Use signage at all entrances and strategically throughout the facility to remind customers of physical distancing and face cover use at every opportunity.
- Increase distances between tables/chairs in showrooms and waiting areas to ensure physical distancing.
 - Reconfigure, restrict, or close common areas to maintain physical distancing or move to open areas.

Physical Distancing Guidelines

- Adjust in-person meetings, if they are necessary, to ensure physical distancing.
 - Stagger employee breaks, in compliance with wage and hour regulations, to maintain physical distancing protocols.
- Place additional limitations on the number of persons in enclosed areas like supply closets to ensure at least six feet of separation.
- Redesign office spaces, cubicles, etc. to ensure workspaces allow for six feet between employees.
- Adjust maximum occupancy rules based on the size of your facility to limit the number of people in a store, office, or showroom at one time.

Physical Distancing Guidelines

- Provide a single, clearly designated entrance and separate exit to help maintain physical distancing, wherever possible.
- Ask vendors who must enter the facility to follow physical distancing and to use face covers.
- Allow only one customer in vehicles during test drives with the employee sitting in opposite back seat. Both customer and employee must wear face covers.

Physical Distancing Guidelines

- Encourage customer appointments and request that customers follow physical distancing and face cover recommendations while waiting for service using visual cues or ask customers to wait in their vehicles.
- Offer curbside delivery or pickup and move sales and agreements to remote/digital platforms as feasible.
- Discontinue shuttle services.
- Require employees to not use handshakes and similar greetings that break physical distance.

Local Health Orders

- The State "General Checklist" for Dealerships should be seen as complementing, not replacing, more stringent county-specific orders and protocol forms
 - Check your local order for most current information.
- Employers are responsible to follow both State and local guidance, whichever is more restrictive.
- Chart of local health orders available on CNCDA Comply.

COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC HEALTH ORDER OF THE HEALTH OFFICER



Appendix A: Social Distancing Protocol

Business name:

Facility Address:

Approximate gross square footage of space open to the public:

Businesses must implement all applicable measures listed below and be prepared to explain why any measure that is not implemented is inapplicable to the business.

A. SIGNAGE

- Signage at each public entrance of the facility to inform all employees and customers that they should: avoid entering the facility if they have a cough or fever; maintain a minimum six-foot distance from one another.
- □ Signage posting a copy of the Social Distancing Protocol at each public entrance to the facility.
- B. MEASURES TO PROTECT EMPLOYEE HEALTH (CHECK ALL THAT APPLY TO THE FACILITY)
- Everyone who can carry out their work duties from home has been directed to do so.
- All employees have been told not to come to work if sick.
- Symptom checks are being conducted before employees may enter the workspace.
- All employees that have contact during their shift(s) with the public or other employees are offered, at no-cost, a cloth face covering to be used at work when interacting with them.
- All desks or individual workstations are separated by at least six feet.
- Break rooms, restrooms, and other common areas are being disinfected frequently, on the following schedule:
 - Break rooms:
 - Restrooms:
- Other:
- Disinfectant and related supplies are available to all employees at the following location(s):

Part 4 EMPLOYMENT ISSUES

What do we do if we believe any employee may have been exposed to COVID-19?

- May we send home individuals who we believe may have been exposed to the virus?
 - If a person traveled to an area with a high infection rate, self-quarantine for 14 days.
 - Critical infrastructure workers may be permitted to continue work following potential exposure to COVID-19, provided they remain asymptomatic and additional precautions are implemented to protect them and the community.
 - A potential exposure means being a household contact or having close contact within 6 feet of an individual with confirmed or suspected COVID-19.
 - The timeframe for having contact with an individual includes the period of time of 48 hours before the individual became symptomatic.
 - If you observe an individual with COVID-19 symptoms, send them home immediately and require that the meet the "Return to Work" Requirements.

What do we do if we believe any employee has been exposed to COVID-19?

- CDC Guidance: Critical Infrastructure workers who have had an exposure but remain asymptomatic should adhere to the following practices prior to and during their work shift:
 - Pre-Screen: Employers should measure the employee's temperature and assess symptoms prior to them starting work upon entering the facility.
 - Regular Monitoring: As long as the employee doesn't have a temperature or symptoms, they should self-monitor under the supervision of their employer's occupational health program.
 - Wear a Mask: The employee should wear a face mask at all times while in the workplace for 14 days after last exposure.
 - Social Distance: The employee should maintain 6 feet and practice social distancing as work duties permit in the workplace.
 - Disinfect and Clean work spaces: Clean and disinfect all areas such as offices, bathrooms, common areas, shared electronic equipment routinely.
 - > Do not share equipment or electronic devices.

What do we do if we believe any employee has COVID-19?

- May we send home individuals who we believe may have the virus?
 - ▶ If symptoms are present:
 - ▶ If the employee becomes sick during the day, they should be sent home immediately.
 - Surfaces in their workspace should be cleaned and disinfected.
 - Information on persons who had contact with the ill employee during the time the employee had symptoms and 2 days prior to symptoms should be compiled.
 - Others at the facility with close contact within 6 feet of the employee during this time would be considered exposed.
 - ▶ Those persons should abide by guidelines for exposed individuals listed previously.

What do we do if an employee reports that they have COVID-19?

- What if an employee tests positive or has symptoms?
 - ▶ The infected employee should not return to work and must self-isolate.
 - > Person should self-isolate for at least 10 days since the beginning of symptoms.
 - Must wait until 3 days after the fever abates and symptoms diminish without medication.
 - Inform fellow employees who came in actual contact or close contact (within 6 ft. or in a closed space for more than 10 minutes) with the infected employee of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the Americans with Disabilities Act (ADA).
 - The fellow employees should follow exposure guidelines listed previously, including then self-monitor for symptoms (i.e., fever, cough, or shortness of breath).
 - Disinfect and Clean work spaces: Clean and disinfect all areas such as offices, bathrooms, common areas, shared electronic equipment routinely.

If an employee tested positive or had symptoms of COVID-19, when can they return to work?

Two Options for returning an employee to work:

- Employee tests negative twice (at least 24 hours apart); or
- Employee has been out of work for at least 10 days since the beginning of symptoms, and must wait until 3 days after the fever abates and symptoms diminish without medication— whichever is long.

What do we do if we believe or are informed that an employee is particularly susceptible to COVID-19 complications?

- Employees with pre-existing conditions may be entitled to accommodations such as time off or additional distancing in the workplace.
- ► Handle like any other disability accommodation.
- Handle discreetly to protect privacy.
- Don't force them unilaterally to go home and not work.
- ▶ Follow their health care provider's advice.

Reinstatement Issues

- Reinstatement after a Furlough or Layoff raises legal issues
 - Many courts take the position that the furlough or layoff results in a loss of employment and then a "re-employment" of the employee.
 - This break in employment causes serious legal concerns with the enforceability of contracts, agreement, etc. (such as at-will or arbitration) from the prior stint of employment.
 - Failure to properly handle the reinstatement could give rise to serious legal liability and risk.
 - Employers must either get all new hire documents and pay plans resigned at reinstatement or must use a Reinstatement Agreement to protect themselves.
 - HR Hotlink has automated the entire furlough/layoff process and the Reinstatement process to address these issues and protect dealers. Information on HR Hotlink is available at <u>www.hrhotlink.com</u> or though CNCDA's licensed vendor webpage.
 - A sample Reinstatement Agreement is available also available at <u>https://www.employerlawyers.com/legal-updates/</u>.

How Do We Get People to Return to Work?

- Send a formal recall letter to all recalled employees.
 - ▶ Give a deadline to report for work.
 - Confirm that they are being recalled to the same terms and conditions of employment, including compensation, benefits, duties, etc.
 - Doing so may give you a cure to PPP "head count" failures
 - Let them know that failure to report for work as instructed may result in the loss of any recall later.
 - > Let them know that failure to report for work may result in a loss of unemployment benefits.
 - A sample recall letter is available also available at <u>https://www.employerlawyers.com/legal-updates/</u>.
- If people have medical or health conditions that prohibit their return, engage in the interactive process to see if a reasonable accommodation is required and possible.

Part 5 GOVERNMENT BENEFITS

Government Benefits - Overview

Major actions by government over the past two months:

- Families First Coronavirus Response Act (FFCRA)
 - Creates coronavirus-related paid employee leave benefits
- Coronavirus Aid, Relief, and Economic Security Act (CARES)
 - Creates new business loan program (PPP)
 - Expanded UI benefits



The FFCRA

- Signed into law on March 18, 2020. Took effect April 1, 2020 and remains in effect until December 31, 2020.
- Posting requirement
 - Federal notice must be posted in the workplace, emailed, or direct-mailed to employees.
 - It's available at: <u>https://www.dol.gov/agencies/whd/pandemic</u>

EMPLOYEE RIGHTS

PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These providens will apply form April 1, 2020 through December 31, 2020.

· PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- + 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- % for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at % for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part line employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

· ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are calciplate for up to how weeks of this or partially paid with kaws for CAVID 19 related reagons (see below). Employees who have been employed for al load 30 days grant to thair leave request may be eligible for up to an additional 10 weeks of partially paid kepanded family and medical leaver for leaver and the below of the sector

. QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19 An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employees: 1. is subject to a Federal, State, or local guarantine or 5. is caring for his or her child whose school or isolation order related to COVID-19. place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons: or 2. has been advised by a health care provider to 6. Is experiencing any other substantially-similar condition specified by the U.S. Department of self quarantine related to COVID-19 3. is experiencing COVID-19 symptoms and is seeking Health and Human Services a medical diagnosis: 4. is caring for an individual subject to an order described in (1) or self-guarantine as described in (2),

- ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who hardwig takes paid sick leave or respanded family and medical teave under the FFCRA, files a compliant, or institutes a proceeding under or ministed to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalities and enforcement by WHD.



The FFCRA

- ▶ Applies to private sector employers with 500 or less employees.
 - ▶ Count determined by either FMLA "integrated employer test" or FLSE "joint employer" test.
- > Applies to employees that have worked for employer for at least 30 days.
- The DOL provides guidance on how to count employees (and other issues) at: <u>https://www.dol.gov/agencies/whd/pandemic/ffcra-questions</u>
- Local concerns
 - ► LA City passed ordinance imposing leave requirements on large employers (no reimbursement!).
- Small Employer Exception: Employers with fewer than 50 employees may be exempt from providing both Paid Sick Leave and Expanded FMLA to employees whose leave is prompted by closure of schools or child care providers "when doing so would jeopardize the viability of the small business as a going concern." Authorized officer must confirm that through one of three different conditions apply.
 - Seek specific legal advice before assuming this will apply for you.

FFCRA paid leave requirements

- ▶ Generally, the FFCRA requires covered employers to provide to all employees:
 - ▶ Up to 80 hours of paid sick leave at the employee's regular rate of pay (\$511 per day cap).
 - When? If employee is unable to work because of quarantine or experiencing COVID-19 symptoms and seeking a medical diagnosis.
 - ▶ Up to 80 hours of paid sick leave at 2/3 the employee's regular rate of pay (\$200 per day cap).
 - When? If employee needs to care for someone that is subject to a quarantine or care for a child who is not at school or with a child care provider due to COVID-19.
 - Up to 10 additional weeks of paid expanded family and medical leave at two-thirds the employee's regular rate of pay (\$200 per day cap).
 - When? To take care of a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.
- Learn more at: <u>https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave</u>

FFCRA employer reimbursement

- Employers providing qualifying paid leave under the FFCRA can receive tax credits, which are designed to fully reimburse the employer for its costs.
- > The program is designed to provide prompt reimbursement to employers:
 - The IRS has indicated on its website that employers who pay qualifying sick or childcare leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and childcare leave that they paid.
 - If there are not sufficient payroll taxes to cover the cost of qualified leave, employers will be able to file a request for an accelerated payment form the IRS, which the IRS expects to process quickly.

FFCRA Limitations

- <u>FFCRA paid leave is limited and is not</u> <u>designed to replace unemployment</u> <u>benefits</u>.
- An employee regularly scheduled to work must request such leave. You should not plan to use the leave as a substitute for furloughs/layoffs.
- Fine, Boggs, and Perkins LLP has developed a Leave Request Form that is freely accessible to CNCDA members.

	roper documentation supporting your need for leave, and return company policy to provide false information or documentation.
Employee Name (print clearly)	Cafe
Requested Period Of Leave: I request the following pe	riod for my leave of absence: From to
Reason for Leave: I am requesting time off because I a though work is available to me for the following reason(s	am unable to work (either in person or remotely, i.e., telework) even i) (check all that apply):
employee is eligible for the number of hours of lea	
 I have been advised by a health care pro provider believes that I have COVID-19, may 	wider to self-quarantine related to COVID-19 because my health care have COVID-19 or I am particularly vulnerable to COVID-19.
Name and Title of Health Care Provider: 3. I am experiencing COVID-19 symptoms have one or more of the following symptoms identified by the U.S. Centers for Disease Co	and am actively taking affirmative steps to seek a medical diagnosis. I fever, dry cough, shortness of breath, or other COVID-19 symptoms
 I have a genuine need to care for an ind (select one): an immediate family member 	ividual with whom I have a personal relationship, and that person is r, i a roommate, i a person with whom I have a personal have the responsibility to care for that person and
Stay-at- Home orders) related to COVID-	or local guarantine or isolation order (including Shelter-In-Place or 19 that has ordered the person to stay at home.
Name of government entity issuing ord b. The person was advised by a health care care provider believes that the person has Name and Title of Health Care Providi	provider to self-quarantine related to COVID-19 because the health s or may have COVID-19, or is particularly vulnerable to COVID-19.
	similar condition specified by the Secretary of Health and Human
weeks of paid sick leave followed by up to	e: A full-time employee is eligible for up to 12 weeks of leave (two 10 weeks of paid expanded family & medical leave) at 40 hours a for leave for the number of hours that the employee is normally
 I am caring for a child whose school or p COVID-19 reasons. I need to care for my chil co-guardian) or the usual child care provider 	slace of care is closed or child care provider is unavailable due to id as i do not have another suitable individual (such as a co-parent or to provide for the child's needs during the leave requested. I have (or 30 calendar days of the last 60 calendar days if laid off or nstated).
Name of Child:	Name of Provider/School:
Personal Reasons Not Listed Above 7. I am requesting a leave of absence for m explain:	easons other than those listed above and below herein. If so, please
Type of Leave Requested	
	but unused Vacation and/or PTO be paid on my next payroll check. al Leave (COVID-19)
I am requesting intermittent leave or a reduced work sch if yes, explain why it is needed and the leave schedule propo	No Ves No
I certify that the foregoing is true and correct to the	best of my knowledge.
	Date

FFCRA Limitations

- Reinstatement Rights
 - ▶ Reinstatement obligations match those of FMLA historically.
 - If an employer choose to lay off an employee, that employer will bear the burden of demonstrating that the employee would have been laid off even if the employee had not take leave under this Rule.
 - Small-Employer Exception (less than 25) allows employers to not reinstate the employee under certain, very limited conditions.
 - This same set of limitations applies to employer treatment of "key" employees as defined under FMLA.
- Seek Legal Assistance before going down this path

The CARES Act

- Signed into law on March 27, 2020, the Coronavirus Aid, Recovery, and Economic Security Act (CARES) authorizes more than \$2 trillion in government resources to aid workers and businesses. Key elements include:
 - Small business loans (Paycheck Protection Program);
 - Enhanced unemployment benefits;
 - Changes to estimated tax payments and tax credits;
 - Special rules for the use of retirement funds.

- Small Business Loans (Paycheck Protection Program)
 - Purpose
 - > Designed help businesses retain employees at their pre-crisis base pay.
 - Eligibility
 - Nearly every small business may qualify (employees 500 or less) Review counting rules at <u>www.sba.gov/size</u>.
 - > No personal guarantee or collateral required.
 - Amount
 - ▶ Employers may borrow up to 250% of monthly pre-crisis payroll, up to \$10,000,000.
 - Certification
 - ▶ More on this later...

What are you allowed to use PPP loans for?

- Payroll costs (allowable; forgivable up to \$100K per employee)
- Interest on mortgage obligations (allowable and forgivable)
- Interest on other debt obligations (allowable, might not be forgivable)
- Rent (allowable and forgivable)
- Utilities (allowable and forgivable)

Application Deadline

• June 30, 2020

How is forgiveness determined? (Brief overview)

- Add up your forgivable expenses during the eight-week period immediately following loan disbursement (payroll, mortgage interest, rent, utilities).
- ▶ Total forgivable expenses will be reduced by complex process including:
 - 1. At least 75% of total forgivable expenses must be payroll costs.
 - 2. Reduction of FTEs compared to pre-crisis baseline periods.
 - 3. Person-by-person wage reduction analysis (does not include employees earning more than \$100K).
- Reductions based on prongs 2 and 3 can be reduced/eliminated if employees rehired prior to June 30.
- Reductions also eliminated where written job return offer at previous rate of pay is rejected

- How to maximize your loan forgiveness?
 - Make sure that at least 75% of loan proceeds are used for payroll costs during the 8 week period immediately following disbursement (in other words, consider immediately reinstating employees).
 - ▶ Remember Have your rehired employees sign a reinstatement agreement.
 - Prepare records to support expenses and your eventual forgiveness application.
 - Use your records to model best forgiveness strategy (e.g., may be able to exclude employees if they earned more than \$100K on an annualized basis during any pay period in 2019).

Government Benefits – CARES Act (PPP) Emerging Questions and Concerns

- ▶ The Treasury continues to change program rules, creating significant confusion.
- Borrowers must certify the "necessity" of the PPP loan request.
 - Must be able to certify that "Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant"
 - Borrowers with less than \$2 million will be deemed to have made this certification in good faith.
 - Affiliation rules appear to allow dealership groups to count loans for each store separately for \$2 million threshold (although this could change).
- Borrowers should balance their access to other capital and liquidity against their pandemic-related needs
 - Justify "necessity" through explanation and documentation their reasons for drawing on this loan program to avoid alternatives that would have been significantly detrimental to the business.
 - Particularly important for loans greater than \$2 million, which appear likely to be audited.
- Likely consequence of failing certification test: no forgiveness, must return loan.

- Business Tax Relief
 - Employee retention credits
 - ▶ Refundable tax credit for an employer's share of Social Security tax.
 - Eligible employers must have operations fully/partially suspended because of shut-down order, or gross receipts decline by more than 50%.
 - > Seriously consider this option if you are not using a PPP loan.
 - Payroll tax deferral
 - ▶ Tax can be deferred into 2021 and 2022.
 - ▶ May not qualify if you received a forgivable loan (PPP).
 - Other changes (check with your accountant)
 - ▶ Net operating losses, business interest deductions, AMT credits, depreciation changes.

Enhanced Unemployment Benefits

- CARES adds \$600 per week from the federal government on top of whatever amount a worker receives through State unemployment benefits.
 - California's maximum now is \$450 per week
 - > Thus, recipients would get \$1,050 per week in unemployment benefits
 - ▶ These benefits will last for four months (through July 31, 2020)
- CARES also adds 13 weeks of unemployment insurance, both for existing claimants and for potential new filers (resulting in a 39-week period for benefits).
- CARES allows self-employed, freelancers, and independent contractors to apply for special (temporary) Pandemic Unemployment Assistance benefits.

Special Rules for Use of Retirement Funds

- ▶ The CARES Act provides special rules for taking distributions from retirement funds.
- Where applicable, the rule allows distribution without early-distribution penalty of up to \$100,000 from qualified requirement funds.

Thank you!

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