

Coronavirus Laws and Your Dealership: Part IX

September 8, 2021

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DIAMOND



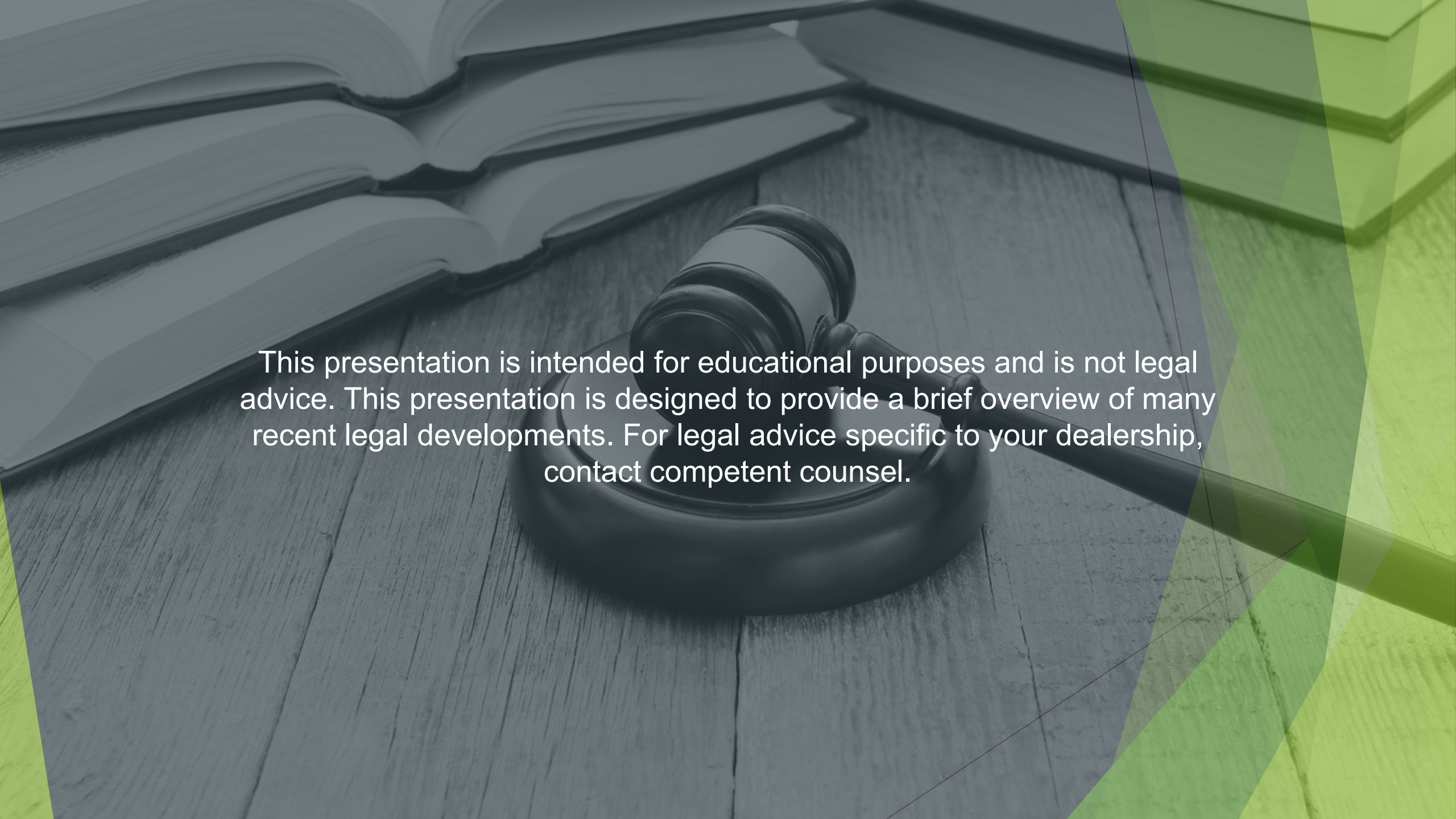
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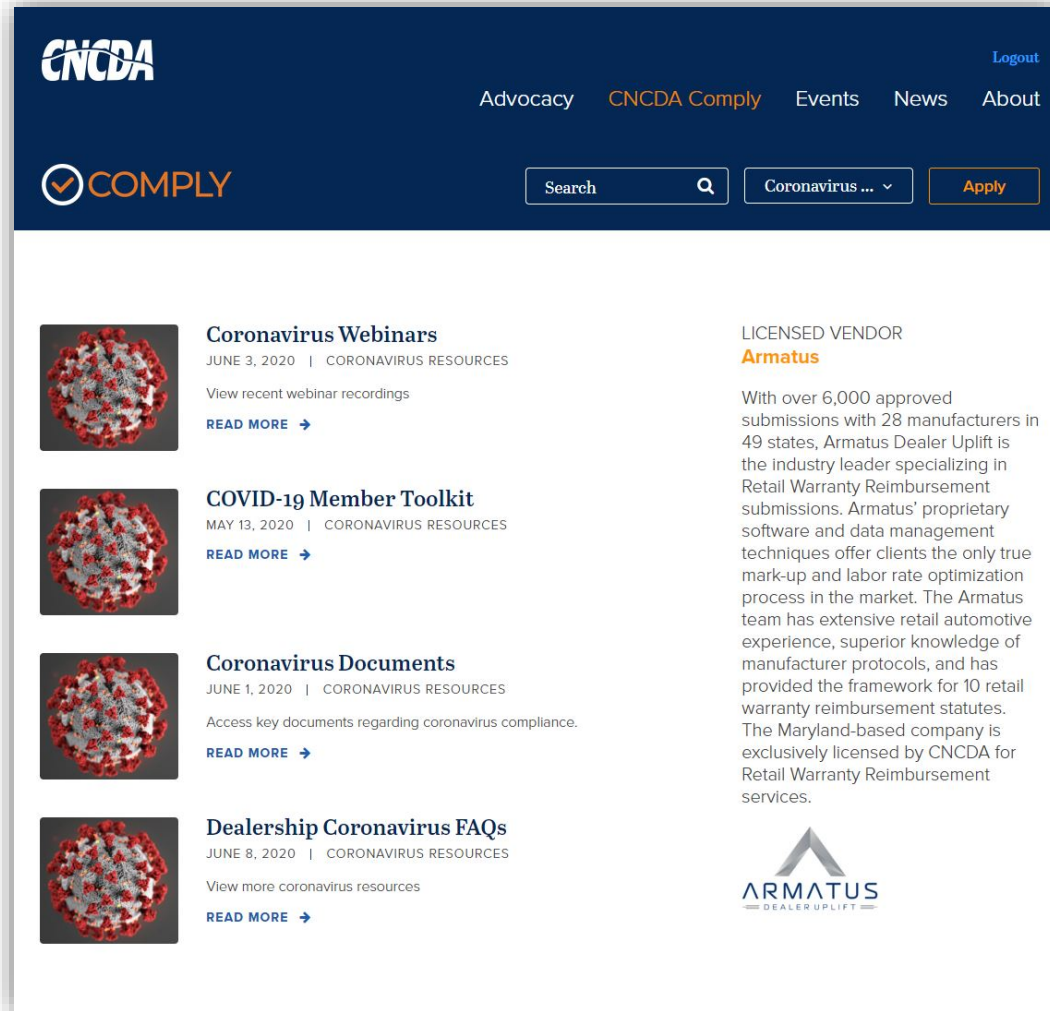
What are we covering today?

1. New State and Local Orders
2. Employee Vaccination Issues
3. Continuing Compliance Issues
4. Q&A



This presentation is intended 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

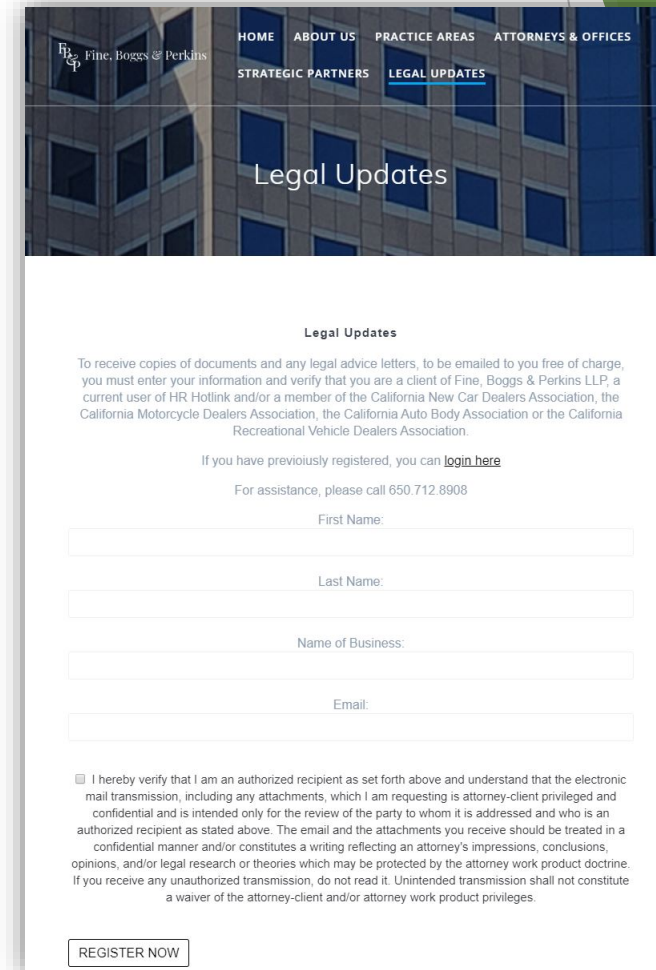


The screenshot shows the CNCDA website's 'COMPLY' section. The header includes the CNCDA logo, a 'Logout' link, and navigation links for 'Advocacy', 'CNCDA Comply', 'Events', 'News', and 'About'. A search bar contains the text 'Coronavirus ...' and an 'Apply' button. Below the header, there are four resource cards, each featuring a coronavirus icon:

- Coronavirus Webinars** (JUNE 3, 2020 | CORONAVIRUS RESOURCES): View recent webinar recordings. [READ MORE →](#)
- COVID-19 Member Toolkit** (MAY 13, 2020 | CORONAVIRUS RESOURCES): [READ MORE →](#)
- Coronavirus Documents** (JUNE 1, 2020 | CORONAVIRUS RESOURCES): Access key documents regarding coronavirus compliance. [READ MORE →](#)
- Dealership Coronavirus FAQs** (JUNE 8, 2020 | CORONAVIRUS RESOURCES): View more coronavirus resources. [READ MORE →](#)

To the right of these cards is a 'LICENSED VENDOR' section for **Armatus**. The text describes Armatus' software and data management techniques for retail warranty reimbursement, noting that the company is exclusively licensed by CNCDA for these services. The Armatus logo is shown at the bottom of this section.

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



The screenshot shows the 'Legal Updates' page on the Fine, Boggs & Perkins website. The header includes the firm's name and navigation links for 'HOME', 'ABOUT US', 'PRACTICE AREAS', 'ATTORNEYS & OFFICES', 'STRATEGIC PARTNERS', and 'LEGAL UPDATES'. The main heading is 'Legal Updates'. Below this is a registration form with the following text:

Legal Updates

To receive copies of documents and any legal advice letters, to be emailed to you free of charge, you must enter your information and verify that you are a client of Fine, Boggs & Perkins LLP, a current user of HR Hotlink and/or a member of the California New Car Dealers Association, the California Motorcycle Dealers Association, the California Auto Body Association or the California Recreational Vehicle Dealers Association.

If you have previously registered, you can [login here](#)

For assistance, please call 650.712.8908

First Name:

Last Name:

Name of Business:

Email:

I hereby verify that I am an authorized recipient as set forth above and understand that the electronic mail transmission, including any attachments, which I am requesting is attorney-client privileged and confidential and is intended only for the review of the party to whom it is addressed and who is an authorized recipient as stated above. The email and the attachments you receive should be treated in a confidential manner and/or constitutes a writing reflecting an attorney's impressions, conclusions, opinions, and/or legal research or theories which may be protected by the attorney work product doctrine. If you receive any unauthorized transmission, do not read it. Unintended transmission shall not constitute a waiver of the attorney-client and/or attorney work product privileges.

[REGISTER NOW](#)

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



Part 1
NEW STATE AND LOCAL
ORDERS

Status of Health Orders - Statewide

- ▶ The statewide color-coded county-level restrictions were rescinded on June 15
 - ▶ No more business occupancy limits
- ▶ Face masks (statewide)
 - ▶ Indoor public spaces
 - ▶ Not fully vaccinated – masks required
 - ▶ Fully vaccinated – masks recommended
 - ▶ Masks required for everyone if there is an “outbreak” of COVID-19 in the workplace (i.e., 3 or more cases within a 14-day period)
 - ▶ Test drives and shuttle service
 - ▶ Always required if more than one person in the vehicle, regardless of vaccination status

Status of Health Orders - Statewide

- ▶ Travel advisories (both domestic and international)
 - ▶ Fully vaccinated – no post-travel quarantine period required
 - ▶ Not fully vaccinated – must quarantine for 7 days if you get a negative test result, or quarantine for 10 days if not tested
 - ▶ Follow CDC guidance. ([Click here](#))

Status of Health Orders – Local Orders

- ▶ As cases rise due to the Delta Variant, several counties have imposed mask mandates, which require everyone (regardless of vaccination status) to wear masks in all indoor public places:
 - ▶ Los Angeles County
 - ▶ Bay Area (Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara, and Sonoma Counties and the City of Berkeley)
 - ▶ Sacramento County
 - ▶ Stanislaus County
 - ▶ Yolo County
- ▶ Check the status of your local jurisdiction. ([Click here](#))



Part 2
EMPLOYEE
VACCINATION ISSUES

Minimum Vaccination Requirements

- ▶ Documentation of employee vaccination information
 - ▶ Required by Cal/OSHA since June 2021
 - ▶ If employee fails to provide info, treat them as unvaccinated
 - ▶ Employees that are fully vaccinated do not need to wear face coverings indoors in most circumstances (unless a more restrictive local order applies), and they do not need to quarantine if they are asymptomatic and come in close contact with an infected individual.
 - ▶ Sample employee vaccinations status form available on CNCDA Comply.
- ▶ Paid leave for employees that get the vaccine and/or have vaccination side effects
 - ▶ Available until September 30; pending state legislation may change this.

Minimum Vaccination Requirements

- ▶ Can I condition the benefits of vaccination upon the employee providing proof of vaccination?
 - ▶ Yes. If the employee wants to take advantage of special status of vaccinated persons (e.g., not wearing a mask) or not being subject to quarantine when the person has had close contact exposure, then the employer can require proof.
- ▶ Can I require proof of vaccination of employees?
 - ▶ Yes. But they must be treated as confidential medical records. If employee refuses, just treat the employee as not vaccinated.

Vaccine Status Collection

- ▶ How should I go about requiring proof?
 - ▶ Cal/OSHA requires employers to document the vaccination status of employees to work without face coverings indoors.
 - ▶ Honor system (self-attestation) is easiest option.
 - ▶ Instead of asking to see the actual vaccination record, use a written survey to find out status without requiring the actual vaccination record.
 - ▶ Of course, if the employee declines to answer, they would not be eligible for vaccination perks.
- ▶ [Sample Vaccine Status Questionnaire available on CNCDA Comply.](#)

Vaccine Status Questionnaire

Based on current federal, state and local health directives, various social distancing, face covering, and quarantine rules, vary depending upon whether an individual is vaccinated or not. As a result, the company needs to collect vaccination status information from its employees so that it may properly implement its health and safety rules pertaining to COVID-19. In light of this requirement, you must provide the information requested below.

Answering this questionnaire is mandatory but disclosing your health information is voluntary. Please note you are required to provide accurate information about your vaccination status in response to the questions below, or alternatively you may decline to provide your vaccination status. If you decline to provide information about your vaccination status, we will be required to assume you are unvaccinated for purposes of our health and safety procedures which may affect various aspects of your work environment, including but not limited to wearing face coverings in the workplace. For example, if requirements on face coverings allow fully vaccinated employees not to wear face coverings in certain settings, the information collected below will be used to determine whether you will be required to wear a face covering in those settings. If you decline to provide vaccination status that is perfectly acceptable, however, you will be considered as not being vaccinated for the purpose of enforcing the company's health and safety rules.

For purposes of this certification, you are considered "fully vaccinated" two weeks after completing the second dose of a two-dose COVID-19 vaccine (e.g., Pfizer or Moderna) or two weeks after receiving a single dose of a one-dose vaccine (e.g., Johnson & Johnson/Janssen).

Please select the statement below that accurately describes your vaccination status:

- I am fully vaccinated.
- I received my second dose of the Pfizer or Moderna vaccine or my single dose of a Johnson & Johnson vaccine less than two weeks ago.
- I received my first dose of Moderna or Pfizer, and my second appointment is scheduled.
- I have not yet been vaccinated, but I have already scheduled an appointment to receive my first dose of vaccine.
- I have not been vaccinated.
- I decline to answer whether I have been vaccinated.

I understand that I am required to provide accurate information in response to the question above. By signing below, I confirm that I have accurately and truthfully answered the question above. I also understand that if I stated that I am fully vaccinated, my employer may request to view and retain a copy of documentation of my vaccination status (e.g., a copy of my vaccine card or other similar official document confirming vaccination status).

Date

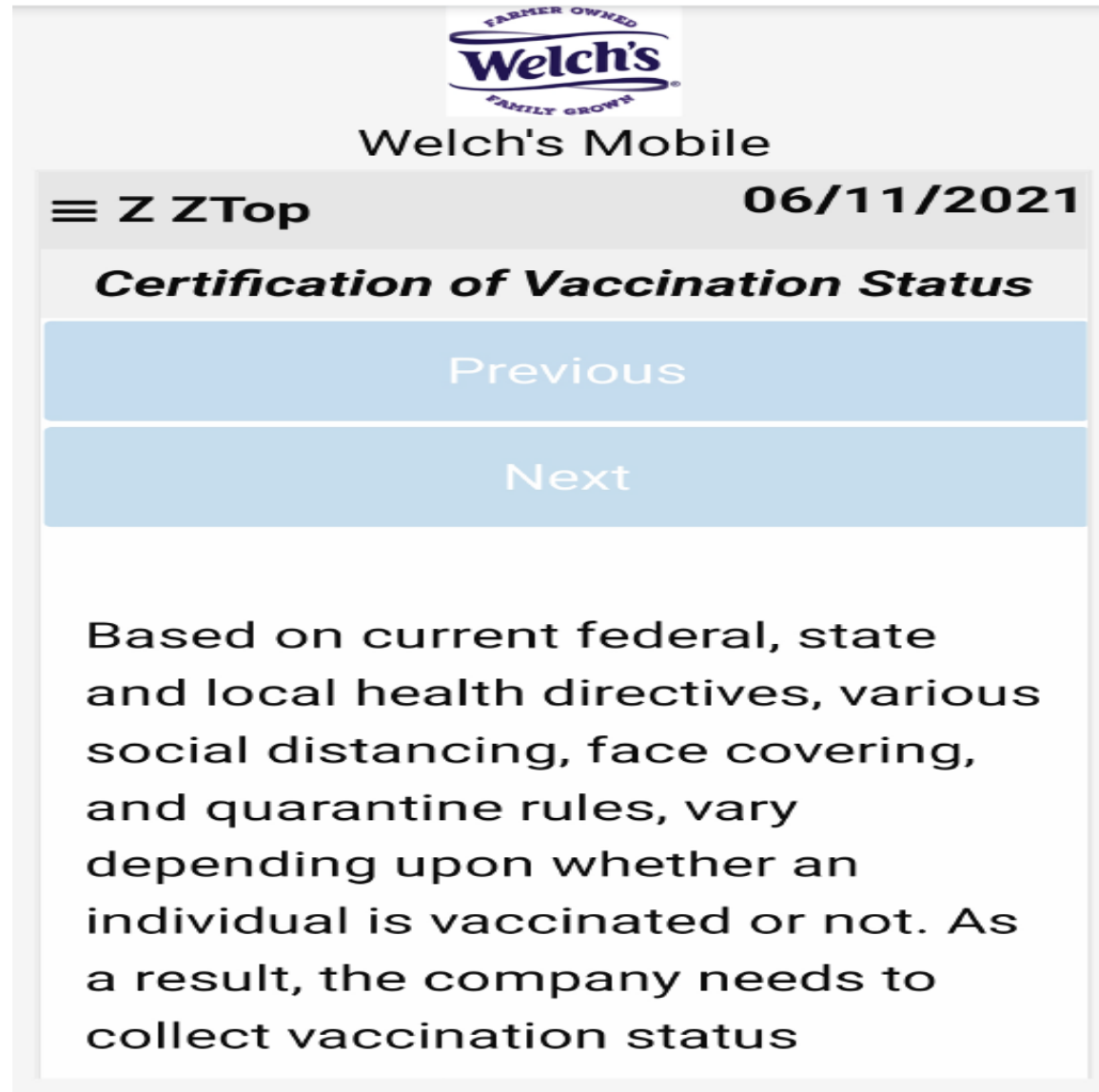
Signature

Print Name

Vaccine Status Collection

- ▶ More documents to store?
- ▶ HR Hotlink to the rescue
 - ▶ Whether you use the full HR Hotlink suite or just the symptom checker, HR Hotlink fixed the problem.
 - ▶ Here is how it works

HOW IT WORKS



The screenshot displays the Welch's Mobile app interface. At the top, the Welch's logo is centered, featuring the text "FARMER OWNED" above "Welch's" and "FAMILY GROWN" below it. Below the logo, the text "Welch's Mobile" is displayed. A navigation bar contains a hamburger menu icon, the text "ZZTop", and the date "06/11/2021". The main content area is titled "Certification of Vaccination Status" and contains two blue buttons labeled "Previous" and "Next". Below these buttons, a paragraph of text explains the purpose of the certification: "Based on current federal, state and local health directives, various social distancing, face covering, and quarantine rules, vary depending upon whether an individual is vaccinated or not. As a result, the company needs to collect vaccination status".

Welch's
FARMER OWNED
FAMILY GROWN

Welch's Mobile

≡ ZZTop 06/11/2021

Certification of Vaccination Status

Previous

Next

Based on current federal, state and local health directives, various social distancing, face covering, and quarantine rules, vary depending upon whether an individual is vaccinated or not. As a result, the company needs to collect vaccination status

HOW IT WORKS



Welch's Mobile

- I am fully vaccinated.
I received my second dose of the Pfizer or Moderna vaccine or my single dose of a Johnson & Johnson vaccine less than two weeks ago.
- I received my first dose of Moderna or Pfizer, and my second appointment is scheduled.
- I have not yet been vaccinated, but I have already scheduled an appointment to receive my first dose of vaccine.
- I have not been vaccinated.
- I decline to answer whether I have been vaccinated.

I understand that I am required to provide accurate information in response to the question above. I hereby affirm that I have accurately and truthfully answered

HOW IT WORKS

☰ Z ZTop 06/11/2021

Vaccination Declaration Report

« ↻ 🖨

Company: Welch's Mobile Workgroup: All

All			
A			
B	⬇	▲	⬇
C			
D	Z ZTop	06/11	Single/Both less than 2 weeks
E	Lorelei Adamson	06/11	Fully Vaccinated
F			
G	Somerset Willison	06/10	Second Scheduled
H	Sybilla Ven Niekerk	06/10	Fully Vaccinated
I			
J	Ky Phipard-Shears	06/10	Decline Answer
K	Henrie Knibbs	06/10	Single/Both less than 2 weeks
L			
M	Shina Hilliam	06/10	Not Vaccinated
N	Shirlee Haacker	06/10	Fully Vaccinated
O			
P	Otto Goodliff	06/10	Decline Answer
Q	Boniface Elkin	06/10	First Scheduled
R			

Mandatory Vaccine Policy: Legal?

- ▶ At our previous webinar, we recommended against requiring employees to get vaccinated, due to the FDA not granting full approval to any vaccine
 - ▶ Vaccines had been administered through an FDA emergency use authorization
- ▶ On August 23, the FDA granted full approval to the Pfizer vaccine for persons 16 years and older
 - ▶ This opens the door to employer vaccine mandates, but there are still important issues to consider

Mandatory Vaccination Policy- Risk Considerations

▶ Federal Discrimination Laws:

- ▶ In May 2021, the United States Equal Employment Opportunity Commission published guidance that federal law permits private employers to require that workers be vaccinated, so long as employers comply with reasonable accommodation provisions of the Americans with Disabilities Act of 1990 and Title VII of the Civil Rights Act of 1964.

▶ State Discrimination Laws

- ▶ On March 4, 2021, the Department of Fair Employment and Housing published guidance entitled “Employment Information on COVID-19” and noted that, under the California Fair Employment and Housing Act (FEHA), an employer may require employees to receive a vaccination against COVID-19.

▶ U.S. Department of Justice

- ▶ On July 6, 2021, the United States Department of Justice issued an opinion that the Federal Food, Drug, and Cosmetic Act does not prohibit private entities from imposing vaccination requirements for emergency use authorization of COVID-19 vaccines.

Mandatory Vaccination Policy- Risk Considerations

- ▶ Opponents of compulsory vaccination argue that such mandates violate various statutory and constitutional provisions:
 - ▶ Due process
 - ▶ Free exercise of religion
 - ▶ The right to attend school
 - ▶ Equal protection
 - ▶ Statutes forbidding non-consensual medical experimentation.
- ▶ Others raise moral or philosophical objections
- ▶ Still others refuse vaccinations because they believe the vaccinations are unsafe

Mandatory Vaccination Policy- Risk Considerations

- ▶ Although courts have rejected these arguments in various settings, employees opposing vaccinations likely will resurrect them to challenge an employer requiring COVID-19 vaccinations
 - ▶ Because the current COVID-19 pandemic poses a greater risk to public health and safety than previous outbreaks, we expect courts will uphold an employer-mandated COVID-19 vaccination against any of those complaints
- ▶ But nothing is certain in California.

California's Constitutional Right to Privacy

- ▶ Article I, Section 8 of the California Constitution provides private citizens with a right to privacy that does not exist in federal law.
 - ▶ California law, unlike federal law, gives employees the right to sue private parties (employers) for alleged violations of the Constitutional right to privacy.
 - ▶ These violations are referred to as Invasion of Privacy claims.
- ▶ California has long recognized that the Constitutional right to privacy in California protects individuals from being forced to allow medical and other intrusive procedures
 - ▶ For example, drug testing has been recognized by the California Supreme Court as a potential invasion of privacy claim
 - ▶ Vaccinations pose the same analysis and risk associated with invasion of privacy claims related to drug testing.

California's Constitutional Right to Privacy — A Balancing Test

- ▶ The determination of whether a mandatory vaccination policy would pose a risk of liability or whether it meets the legal requirements requires a balancing test:
 - ▶ On one side, what is the level of the intrusion upon privacy (medical procedures and records are amongst the highest privacy rights)?
 - ▶ On the other side, what is the important public interest involved? And are there other, less intrusive, means to protect that public interest?
- ▶ In other words, the court's will examine whether the mandatory vaccination policy is "justified."
- ▶ That is why the risk of liability still exists—the answer has not yet been determined by the courts or the legislature.

Mandatory Vaccination Policy — California Legislature Takes a Swing (and a Miss)

- ▶ During the past several weeks, the California legislature proposed two major bills that would have impacted employer vaccination mandates:
 - ▶ AB 455 (Buffy Wicks, D-Oakland)
 - ▶ Required certain businesses to check patron vaccine status
 - ▶ Required California employers to impose vaccine mandate. Employees would either need to be vaccinated or frequently tested.
 - ▶ Bill died. Could come back in 2022.
 - ▶ AB 1102 (Evan Low, D-Campbell)
 - ▶ Provided a framework that sought to reduce employer liability, in the event an employer decided to impose a vaccination mandate.
 - ▶ Bill died. Could come back in 2022.

Mandatory Vaccination Policy- A FREE SAMPLE

A Sample Mandatory Vaccination Policy is available on HR Hotlink, www.employerlawyers.com and on [CNCDA Comply](#). All attendees will receive an email of the free sample policy.

MANDATORY COVID-19 VACCINATION POLICY

Effective September 1, 2021

Purpose

The FDA has fully approved Pfizer & BioNTech's COVID-19 vaccine for adults. Federal, state and local government have also stressed the importance of employers requiring COVID-19 vaccinations as a condition of employment. The California Department of Employment and Housing also released under the Fair Employment and Housing Act stating an employer may require employees to receive an FDA-approved vaccination against COVID-19 infection. Finally, in accordance with the Company's duty to provide and maintain a workplace that is free of known hazards, the Company has determined that the best way to protect our workplace and our employees is to require all employees to be vaccinated in certain areas of our workforce where potential transmission of the infection is higher risk.

Thus, the Company is adopting this policy to safeguard the health of our employees and their families, visitors, and the community at large from COVID-19 by requiring that all current employees and new hires be vaccinated to the full extent permitted by law.

Commitment to Compliance

This policy shall comply with all applicable laws and is based on guidance from the Centers for Disease Control and Prevention, the California Department of Public Health, the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, Cal OSHA, the



Part 3 CONTINUING COMPLIANCE ISSUES

Self-isolation and quarantine

- ▶ Follow Cal/OSHA rules in the workplace!
- ▶ Lots of confusion due to constantly changing CDC guidance
 - ▶ CDC guidance is just guidance – it doesn't govern California workplaces
- ▶ If a local or state order is more restrictive than the Cal/OSHA rule, follow the local or state order.

Self-isolation and quarantine

▶ Self-isolation (virus infection)

- ▶ Applies when a person is infected with COVID-19.
- ▶ If symptomatic, may return to work when all the following are satisfied:
 1. At least 24 hours have passed since a fever of 100.4 degrees Fahrenheit or higher has resolved without the use of fever-reducing medications; and
 2. COVID-19 symptoms have improved; and
 3. At least 10 days have passed since COVID-19 symptoms first appeared.
- ▶ If asymptomatic, may return to work after 10 days from first positive test.
- ▶ Do not require negative test to return to work.

Self-isolation and quarantine

▶ Quarantine (virus exposure)

- ▶ Applies when an unvaccinated person is exposed (“Close Contact”) to someone who has COVID-19
- ▶ Vaccinated persons only need to quarantine when they show symptoms (in which case the isolation rules apply)
- ▶ Asymptomatic persons that have recovered from COVID-19 are exempt if 90 days or less have elapsed since the onset of their symptoms from the original illness.

▶ Cal/OSHA:

- ▶ “Persons who had a close contact but never developed any COVID-19 symptoms may return to work when 10 days have passed since the last known close contact.”
- ▶ If the person has symptoms, treat it as a self-isolation (see previous slide)

Quarantine Confusion

- ▶ CDC outlines potential quarantine periods ranging from 7 days to 14 days.
- ▶ CDPH permits end of quarantine after 7 days, if negative test.
- ▶ **Follow the Cal/OSHA 10-day rule!**
 - ▶ CDC guidance is not binding on California employers; Cal/OSHA rules are binding.
 - ▶ Since Cal/OSHA is more restrictive than CDPH, follow the Cal/OSHA rule.
 - ▶ Special 7-day Cal/OSHA quarantine rule only applies to unique industries (not including dealerships)

Ongoing Compliance Obligations

- ▶ Daily symptom screenings
 - ▶ Applies to all employees
 - ▶ Employees that fail symptom screening test should not report to work until they have approval from authorized management official
- ▶ Special rules for “outbreaks”
 - ▶ “Outbreak” means 3 or more people at a worksite test positive within 14 days
 - ▶ Must make testing available at no-cost to employees during work hours (with a few exceptions)
 - ▶ All employees should wear face coverings
- ▶ N95 respirators
 - ▶ Must provide access to N95 respirators to employees that are not fully vaccinated at no charge
- ▶ Written COVID-19 Prevention Program
 - ▶ Update your written program to comply with Cal-OSHA June 2021 rules

COVID-19 Paid Sick Leave Requirements

▶ ARPA (American Rescue Plan Act)

- ▶ Passed by Congress in Spring 2021.
- ▶ Continued tax credits to offset business cost of providing leave for those who choose to offer paid leave.
 - ▶ Tax Credits available through September 30, 2021.
 - ▶ New balance of up to 80 hours, starting April 1, 2021.
 - ▶ Not 80 **additional** hours; 80 **new** hours, since the old unused hours are no longer available
- ▶ Scope expanded to include vaccine-related circumstances (discussed later)

California Paid Sick Leave (SB 95)

- ▶ Effective March 29, 2021, employers that employ more than 25 employees nationally are required to provide California employees with up to 80 hours of COVID-19 related paid leave.
- ▶ SB 95 also allows employees that took unpaid COVID-19 leave starting January 1, 2021 to request reimbursement.
 - ▶ Request may be oral or in writing
 - ▶ For example, if employee used 80 hours in February 2021 and employer used accrued sick leave pay (not EPSL under the FFCRA) to pay employee, employer may have to reinstate sick leave balance used and/or pay the difference.

California Paid Sick Leave (SB 95)

- ▶ How much time?
 - ▶ 80 hours (full time)
 - ▶ Equivalent amount for part time employees
 - ▶ 14 times the average daily earnings over the previous six months
- ▶ Employers may not require employees to use other leave first.
 - ▶ But other leave may be used if \$511/day cap is reached
- ▶ Must be listed on wage statements as a distinct item.
 - ▶ Separate line item on paystub when used
 - ▶ Paystub must list remaining SB 95 leave available
 - ▶ Possible Huge Problem For Payroll Reporting

California Paid Sick Leave (SB 95)

EMPLOYEE NOTICE REQUIREMENT

- ▶ Poster: 2021 COVID-19 Supplemental Paid Sick Leave
 - ▶ Post in normal places where notice are posted
 - ▶ <https://www.dir.ca.gov/dlse/2021-COVID-19-Supplemental-Paid-Sick-Leave.pdf>
- ▶ Email to employees if no practical place to post

2021 COVID-19 Supplemental Paid Sick Leave

Effective March 29, 2021

Covered Employees in the public or private sectors who work for employers with more than 25 employees are entitled to up to 80 hours of COVID-19 related sick leave from January 1, 2021 through September 30, 2021, immediately upon an oral or written request to their employer. If an employee took leave for the reasons below prior to March 29, 2021, the employee should make an oral or written request to the employer for payment.

A covered employee may take leave if the employee is unable to work or telework for any of the following reasons:

- Caring for Yourself: The employee is subject to quarantine or isolation period related to COVID-19 as defined by an order or guidelines of the California Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer with jurisdiction over the workplace, has been advised by a healthcare provider to quarantine, or is experiencing COVID-19 symptoms and seeking a medical diagnosis.
- Caring for a Family Member: The covered employee is caring for a family member who is subject to a COVID-19 quarantine or isolation period or has been advised by a healthcare provider to quarantine due to COVID-19, or is caring for a child whose school or place of care is closed or unavailable due to COVID-19 on the premises.
- Vaccine-Related: The covered employee is attending a vaccine appointment or cannot work or telework due to vaccine-related symptoms.

Paid Leave for Covered Employees

- 80 hours for those considered full-time employees. Full-time firefighters may be entitled to more than 80 hours, caps below apply.
 - For part-time employees with a regular weekly schedule, the number of hours the employee is normally scheduled to work over two weeks.
 - For part-time employees with variable schedules, 14 times the average number of hours worked per day over the past 6 months.
- Rate of Pay for COVID-19 Supplemental Paid Sick Leave: Non-exempt employees must be paid the highest of the following for each hour of leave:
 - Regular rate of pay for the workweek in which leave is taken
 - State minimum wage
 - Local minimum wage
 - Average hourly pay for preceding 90 days (not including overtime pay)
- Exempt employees must be paid the same rate of pay as wages calculated for other paid leave time.

Not to exceed \$511 per day and \$5,110 in total for 2021 COVID-19 Supplemental Paid Sick leave.

Retaliation or discrimination against a covered employee requesting or using COVID-19 supplemental paid sick leave is strictly prohibited. A covered employee who experiences such retaliation or discrimination can file a claim with the Labor Commissioner's Office. Locate the office by looking at the [list of offices on our website](http://www.dir.ca.gov/dlse/DistrictOffices.htm) (<http://www.dir.ca.gov/dlse/DistrictOffices.htm>) using the alphabetical listing of cities, locations, and communities or by calling 1-833-526-4636.

This poster must be displayed where employees can easily read it. If employees do not frequent a physical workplace, it may be disseminated to employees electronically.



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Coordinated Bases for Paid COVID-19 Leave

- ▶ The Original FFCRA bases have been largely retained, albeit with some tweaks
- ▶ Subject to a quarantine or isolation order (state, local, CDC)
- ▶ Advised by a health professional to self-quarantine
- ▶ Experiencing COVID-19 Symptoms and Actively Seeking Diagnosis
 - ▶ ARPA expansion no longer requires symptoms, but covers time seeking diagnosis following exposure to COVID-19 or where the employer requests that the employee obtain a test
 - ▶ SB 95 still refers to symptoms

Coordinated Bases for Paid COVID-19 Leave

- ▶ Caring for a family member in isolation.
- ▶ Caring for a child whose school/daycare is closed due to COVID-19.
 - ▶ SB 95 qualifies this by requiring not just COVID-related closure of school or care facility, but that the closure is related to COVID-19 on the premises
 - ▶ Note: ARPA would permit leave (intermittent or block time) for school closures (or partial school closures)
- ▶ Attending appointment for COVID-19 vaccine.
- ▶ Experiencing symptoms related to COVID-19 vaccine.

Additional Paid COVID-19 Leave Considerations

- ▶ Leave Valuation Considerations
 - ▶ \$511 per day cap (for employee's own conditions) remains in place under ARPA deduction rules, and has been adopted under SB 95 rules
 - ▶ \$200 per day cap and 2/3 of regular pay limitation still applies under ARPA when caring for others (either isolated because of exposure or because of closed school), but California's SB 95 does not provide for the 2/3 or \$200/day limitations
- ▶ ARPA continues FFCRA six-month average for valuing paid leave and available tax credits
- ▶ SB 95 requires the higher of several options:
 - ▶ Regular rate of pay for the workweek in which leave is taken
 - ▶ Average rate of pay over prior 90 days of employment
 - ▶ State or Local Minimum Wage

Illustrative Examples

- ▶ Example A: Salesperson misses 3 days in April 2020 following adverse post-vaccination symptoms
 - ▶ SB 95 requires paid sick leave based on 90-day average daily rate, unless average rate for current pay period were higher
 - ▶ State or Local MW rates will not generally be higher unless such rates recently increased to a level above the historical average rate
 - ▶ ARPA permits tax credit based on six-month average daily rate
 - ▶ What must the employer pay?
 - ▶ Pay the higher of (a) the 90-day average daily rate (or current pay period rate) and (b) the six-month average daily rate; and
 - ▶ Take the tax credit no higher than the six-month average daily rate

Illustrative Examples

- ▶ Example B1: Technician used 8 days of FFCRA leave in October 2020 because of exposure quarantine, and then missed 8 additional workdays in February 2021 because of new exposure outside of work; Employer paid 2 additional FFCRA days, then 3 days of California Sick Leave (non-COVID), and then applied 3 days of accrued PTO
 - ▶ SB 95 entitles employee to 8 days of Paid Sick Leave in February
 - ▶ Even though FFCRA leave only had 2 available days left, because State 10-day leave entitlement is independent of federal allotment
 - ▶ Even though SB 95 did not become law until March 2021, because the law was specifically made retroactive to January 1, 2021 — all the employer needs to do is ask for the retroactive paid leave
 - ▶ Employer must credit back the PTO days and non-COVID Paid Sick Days, ensuring that the employee received at least the higher of the current rate of pay or the 90-day average pay for the paid time
 - ▶ Employer may take tax credit in 2021 for the 2 days of available FFCRA, but only up to the six-month average daily wage, even if leave paid at a higher 90-day average wage

Illustrative Examples

- ▶ Example B2: Same Technician gets vaccine in mid-April and misses 10 days recovering from adverse vaccine reaction
 - ▶ SB 95 entitles employee to Paid Sick Leave for this purpose, but employee has only 2 available days left
 - ▶ But ARPA allows up to 10 days (80 hours) of paid leave from April 1, 2021
 - ▶ Employer must pay 2 days at 90-day average wage (or the six-month average, if higher), with the remaining 8 days paid at the six-month average wage
 - ▶ Tax credit available at the six-month average wage for all ten days

Employer Leave Obligations

▶ Other Notable Leave Requirements

- ▶ Cal-OSHA ETS requirements may require continued wages and benefits for employees excluded by health department rules or health care provider based on asymptomatic work-related exposure, even if other paid leave entitlements exhausted
- ▶ California requires 3 days of paid sick leave.
- ▶ Local ordinances may require additional sick leave.
- ▶ Employees may also be entitled to unpaid FMLA/CFRA leave.
- ▶ Recalled employees may be able to continue to collect unemployment benefits if they are concerned about returning to work.

COVID-19 Paid Sick Leave - Future

- ▶ COVID-19 Supplemental Paid Sick Leave and ARPA tax credits expire on September 30, 2021
- ▶ What happens after September 30?
 - ▶ If leave period begins on or prior to September 30, provide the full amount of leave owed under the law.
 - ▶ Following September 30, Cal/OSHA ETS continues to require paid sick leave if COVID-19 isolation/quarantine is due to workplace transmission
 - ▶ To avoid paying sick leave, employer must demonstrate that it was not workplace-related
 - ▶ Under existing law, IRS reimbursement will not be available
 - ▶ Employees would also be entitled to use pre-COVID paid sick leave (3 days), accrued paid time off, and/or unpaid leave (if applicable)

Thank you!

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