

# Coronavirus Laws and Your Dealership: Part V

August 6, 2020

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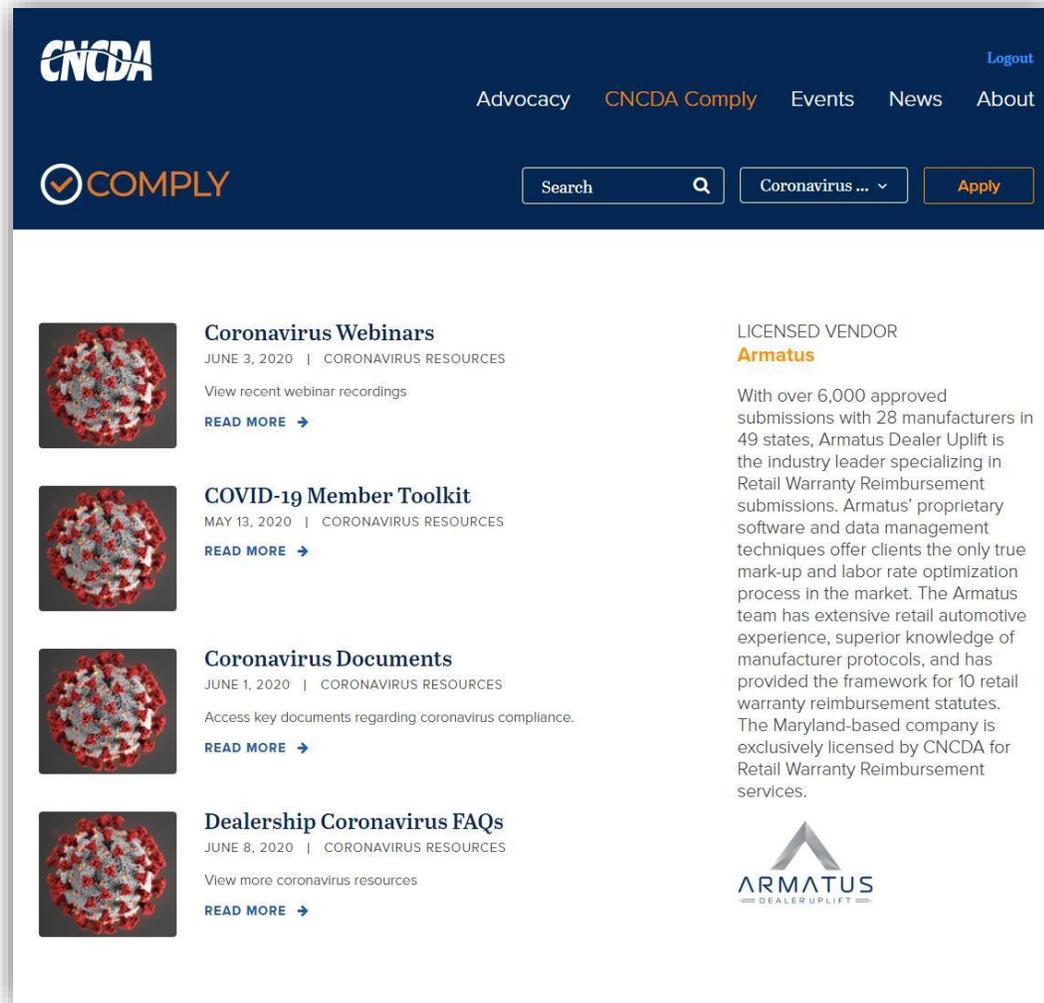
## What are we covering today?

1. State and Local Orders
2. Workplace Safety
3. COVID-19 Response Protocol
4. Employee Benefits
5. Other Employment Considerations
6. Other Important Issues

The image features a wooden gavel resting on a dark wooden surface. To the left of the gavel, an open book is visible, showing its pages. The background is a dark, textured wood. On the right side of the image, there is a large, semi-transparent green geometric overlay consisting of several overlapping rectangular shapes. The text is centered in the middle of the image, overlaid on the wood and the book.

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



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 'Coronavirus ...' and an 'Apply' button. Below the header, there are four resource cards, each with a coronavirus icon, a title, date, category, and a 'READ MORE' link. To the right, there is a section for 'LICENSED VENDOR Armatus' with a detailed description of their services and the Armatus logo.

**CNCDA** Logout

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Access key documents regarding coronavirus compliance.  
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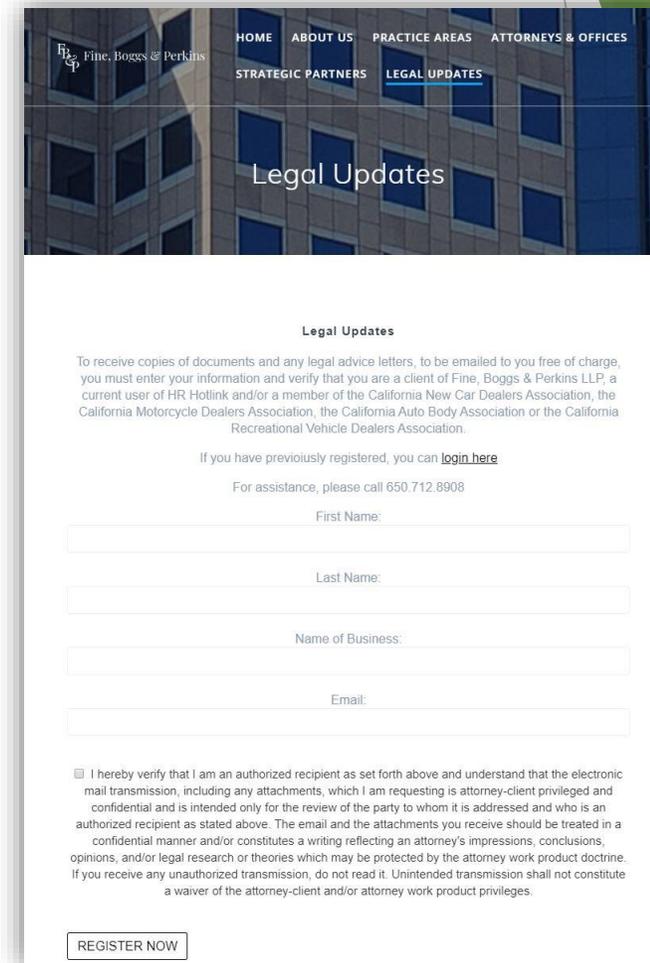
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LICENSED VENDOR  
**Armatus**

With over 6,000 approved submissions with 28 manufacturers in 49 states, Armatus Dealer Uplift is the industry leader specializing in Retail Warranty Reimbursement submissions. Armatus' proprietary software and data management techniques offer clients the only true mark-up and labor rate optimization process in the market. The Armatus team has extensive retail automotive experience, superior knowledge of manufacturer protocols, and has provided the framework for 10 retail warranty reimbursement statutes. The Maryland-based company is exclusively licensed by CNCDA for Retail Warranty Reimbursement services.

**ARMATUS**  
DEALER UPLIFT

<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 content area contains a registration form with fields for 'First Name', 'Last Name', 'Name of Business', and 'Email'. Below the form is a disclaimer and a 'REGISTER NOW' button.

**Fine, Boggs & Perkins** HOME ABOUT US PRACTICE AREAS ATTORNEYS & OFFICES  
STRATEGIC PARTNERS **LEGAL UPDATES**

## Legal Updates

**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

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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
- ▶ Updated on July 29

## 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) – [Interim Guidance for Businesses and Employers to Plan and Respond to COVID-19](#)

#### GENERAL REQUIREMENTS

- ✓ Designate 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.).

# COVID-19 General Checklist for Automobile Dealerships and Rental Employers

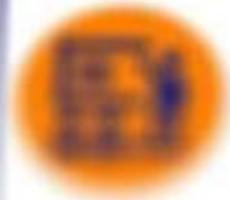
July 2, 2020

This checklist is intended to help automobile dealerships and rental employers implement their plan to prevent the spread of COVID-19 in the workplace and is supplemental to the [Guidance for Automobile Dealers and Rental Employers](#). This checklist is a summary and contains shorthand for some parts of the guidance; familiarize yourself with the guidance before using this checklist.



## Contents of Written Workplace Specific Plan

- The person(s) responsible for implementing the plan.
- A risk assessment and the measures that will be taken to prevent spread of the virus.
- Use of face coverings, in accordance with the [CDC HHS guidance](#).
- Training and communication with workers and worker representatives on the plan.
- A process to check for compliance and to document and correct deficiencies.
- A process to investigate COVID-19 cases, alert the local health department, and identify and isolate close workplace contacts of infected workers.
- Protocols for when the workplace has an outbreak, in accordance with [CDC guidance](#).
- Update the plan as necessary to prevent further cases.



## Register for Worker Training

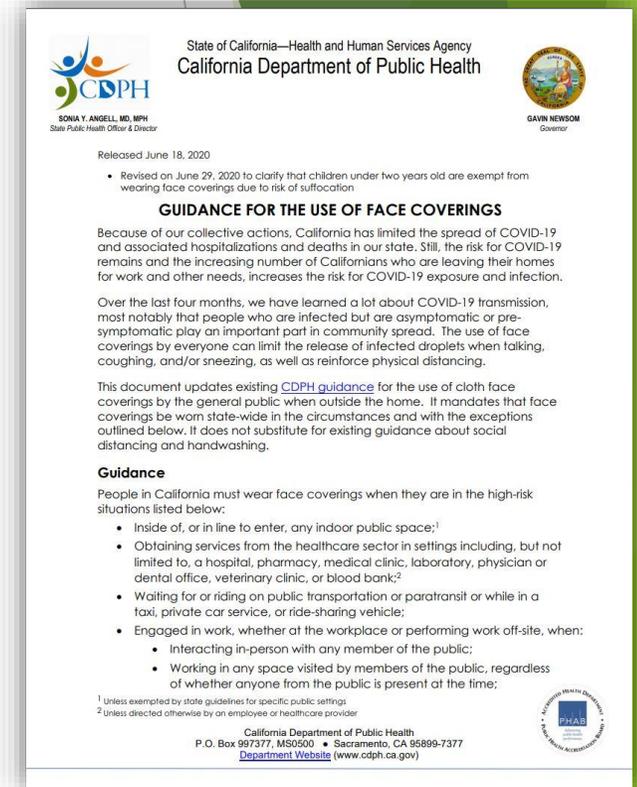
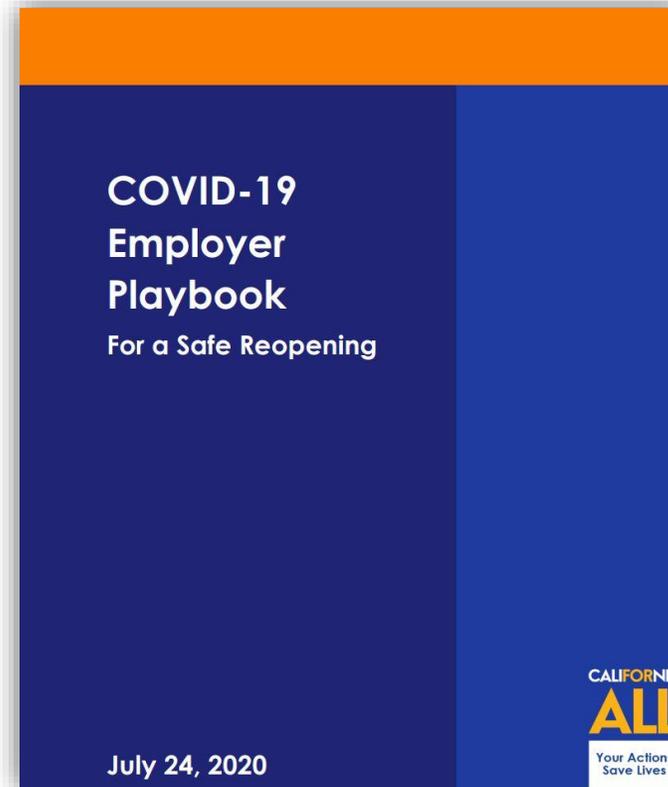
Part 1  
STATE AND  
LOCAL ORDERS

# Status of Vehicle Sales

- ▶ As of mid-June, in-person vehicle sales are allowed in all jurisdictions in California.
  - ▶ Must comply with state and local health requirements, which greatly impact operations (discussed later).
- ▶ We continue to receive reports of confusion from local health officials on this issue.
- ▶ Contact CNCDA in the event a local health official orders your business to close.

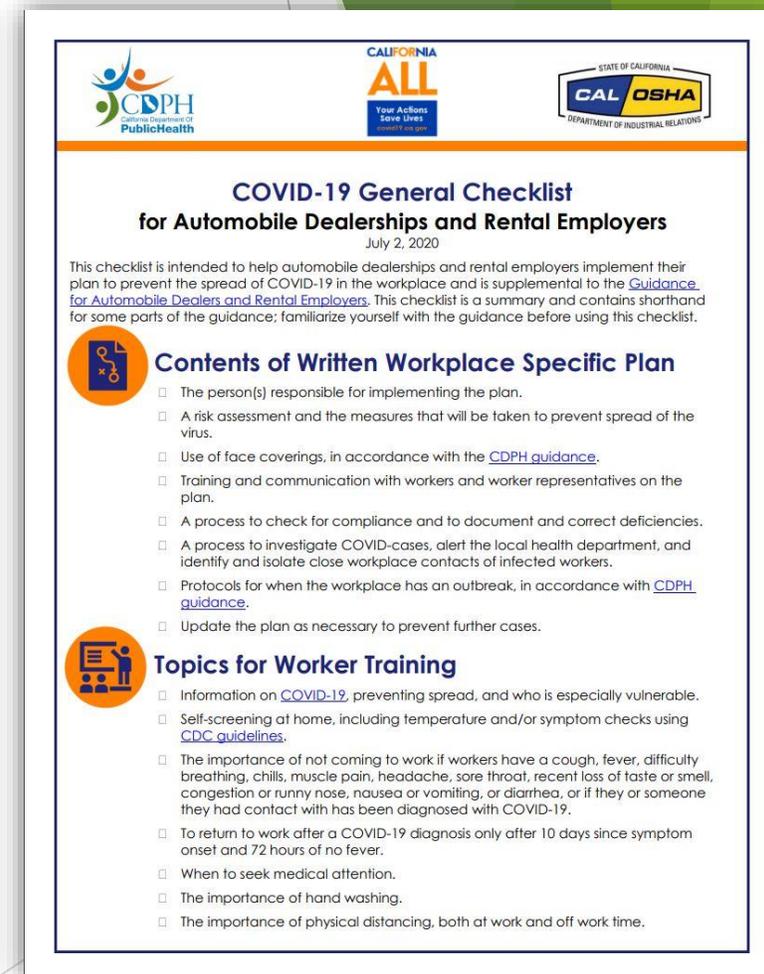
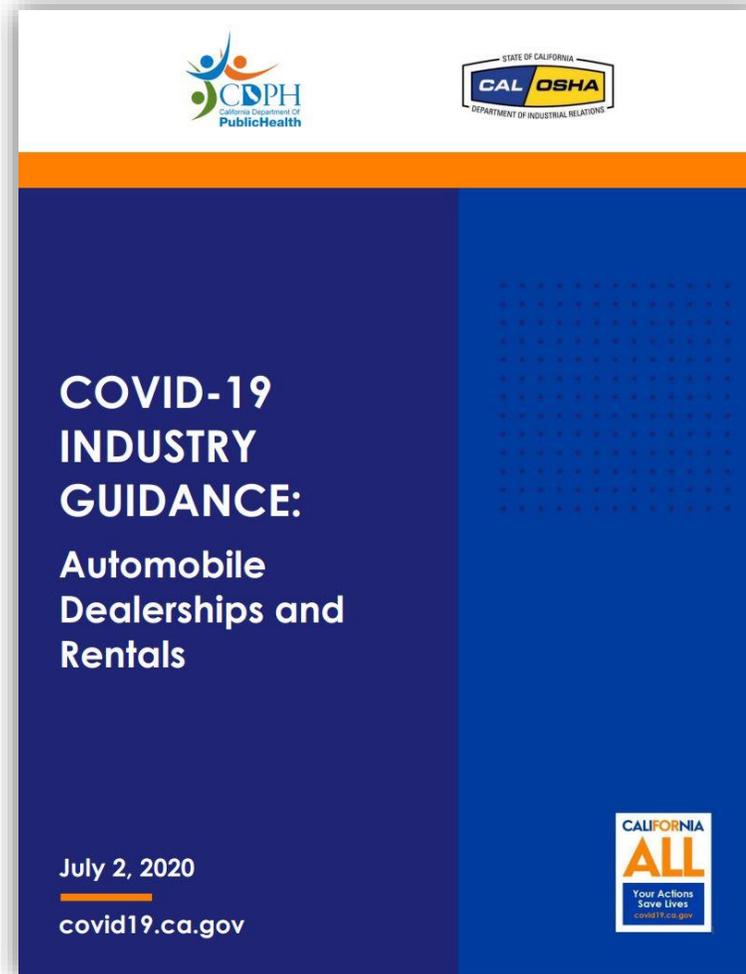
# Statewide COVID-19 Employer Playbook and Face Covering Requirement

- ▶ Issued July 24 and June 18, respectively
- ▶ Playbook outlines various employer responsibilities related to COVID-19
  - ▶ Face covering requirements
  - ▶ How to respond to employee exposure
  - ▶ Reporting and recording cases
  - ▶ Paid sick leave
  - ▶ Workers' compensation
  - ▶ Employee education
- ▶ Requirements discussed later in presentation.
- ▶ Available at <https://covid19.ca.gov/industry-guidance/>



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

- ▶ Issued May 7, 2020
- ▶ Updated July 2, 2020
- ▶ All dealerships in California should review the updated guidance and post a copy of the corresponding checklist.
- ▶ <https://covid19.ca.gov/industry-guidance/>



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

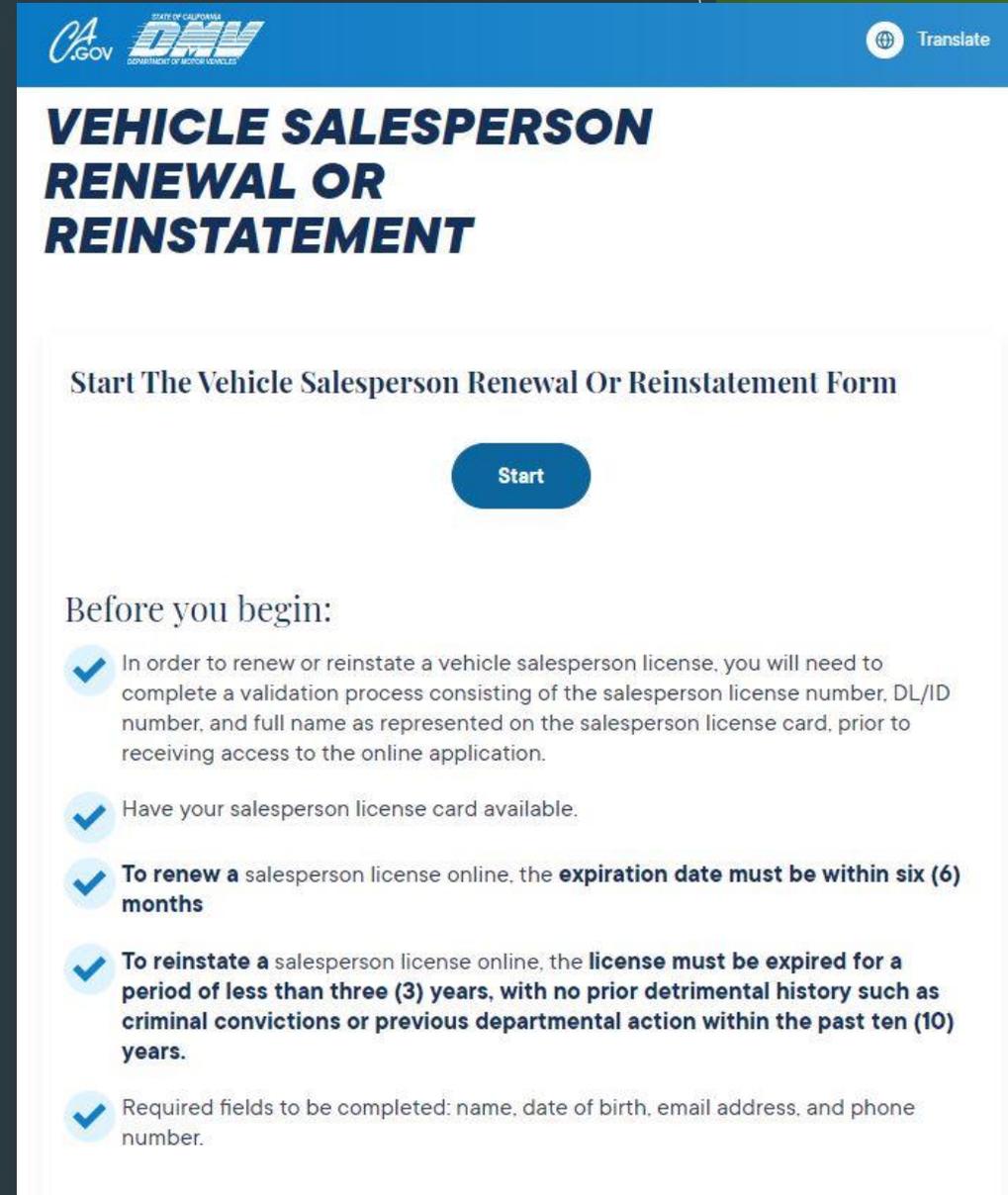
- ▶ Key changes to July 2 update:
  - ▶ Incorporates statewide face covering requirement
  - ▶ Adds information on when employees should self-isolate due to exposure to COVID-19 (discussed later in this presentation)
  - ▶ Shuttle services are to be “limited” whenever possible, instead of discontinued
- ▶ Dealers should review the July 2 update and post updated checklists.
- ▶ Return to Work Protocol updated

# Local Orders

- ▶ Jurisdictions throughout California continue to adopt local orders that impact dealership operations:
  - ▶ Los Angeles County
  - ▶ San Francisco
  - ▶ San Diego County
  - ▶ Alameda County
  - ▶ Contra Costa County
  - ▶ Fresno County
  - ▶ City of Oakland
  - ▶ Sacramento County
  - ▶ San Mateo County
  - ▶ Santa Clara County
  - ▶ Ventura County
- ▶ Additional resources on local orders available for CNCDA Members at <https://www.cncda.org/publications/coronavirus-documents/>

# New DMV Online Resources

- ▶ DMV launched portal to allow vehicle salespersons to renew licenses online.  
(<https://virtual.dmv.ca.gov/olonline/renewal/>)
- ▶ New salesperson applications must be submitted at DMV field offices.



The screenshot shows the DMV website interface for vehicle salesperson renewal or reinstatement. At the top, there is a blue header with the CA.GOV logo, the DMV logo (State of California Department of Motor Vehicles), and a 'Translate' button. The main heading is 'VEHICLE SALESPERSON RENEWAL OR REINSTATEMENT'. Below this, there is a section titled 'Start The Vehicle Salesperson Renewal Or Reinstatement Form' with a prominent blue 'Start' button. Underneath, a section titled 'Before you begin:' lists five requirements for renewal or reinstatement, each preceded by a blue checkmark icon.

CA.GOV STATE OF CALIFORNIA  
DMV DEPARTMENT OF MOTOR VEHICLES

Translate

## 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.



# Part 2 WORKPLACE SAFETY

# Required Compliance Checklist for Dealers

## ▶ Checklist Overview:

- ▶ Create a COVID-19 Compliance Team and name the Team Leader and assign duties
- ▶ Implement Statewide Face Covering Requirement.
- ▶ Written Worksite Prevention and Response Plan
  - ▶ Much Like an Injury and Illness Prevention Program for COVID-19
- ▶ Required Employee Training
  - ▶ Manager (Supervisor)
  - ▶ Employee
- ▶ Daily Individual Symptom Screening
- ▶ Cleaning and Disinfecting
- ▶ Physical (Social) Distancing

# Statewide Face Covering Requirement

- ▶ Issued June 18, 2020
- ▶ Requires employees and customers to wear face coverings in many circumstances:
  - ▶ When indoors in a public space
  - ▶ When working with any member of the public
  - ▶ When working in any common area
  - ▶ When outdoors where maintaining 6 feet of distance is not feasible
  - ▶ Exceptions for children and disabilities
- ▶ Order accessible at:  
<https://covid19.ca.gov/industry-guidance/>

State of California—Health and Human Services Agency  
California Department of Public Health

SONIA Y. ANGELL, MD, MPH  
State Public Health Officer & Director

GAVIN NEWSOM  
Governor

Released June 18, 2020

- Revised on June 29, 2020 to clarify that children under two years old are exempt from wearing face coverings due to risk of suffocation

**GUIDANCE FOR THE USE OF FACE COVERINGS**

Because of our collective actions, California has limited the spread of COVID-19 and associated hospitalizations and deaths in our state. Still, the risk for COVID-19 remains and the increasing number of Californians who are leaving their homes for work and other needs, increases the risk for COVID-19 exposure and infection.

Over the last four months, we have learned a lot about COVID-19 transmission, most notably that people who are infected but are asymptomatic or pre-symptomatic play an important part in community spread. The use of face coverings by everyone can limit the release of infected droplets when talking, coughing, and/or sneezing, as well as reinforce physical distancing.

This document updates existing [CDPH guidance](#) for the use of cloth face coverings by the general public when outside the home. It mandates that face coverings be worn state-wide in the circumstances and with the exceptions outlined below. It does not substitute for existing guidance about social distancing and handwashing.

**Guidance**

People in California must wear face coverings when they are in the high-risk situations listed below:

- Inside of, or in line to enter, any indoor public space;<sup>1</sup>
- Obtaining services from the healthcare sector in settings including, but not limited to, a hospital, pharmacy, medical clinic, laboratory, physician or dental office, veterinary clinic, or blood bank;<sup>2</sup>
- Waiting for or riding on public transportation or paratransit or while in a taxi, private car service, or ride-sharing vehicle;
- Engaged in work, whether at the workplace or performing work off-site, when:
  - Interacting in-person with any member of the public;
  - Working in any space visited by members of the public, regardless of whether anyone from the public is present at the time;

<sup>1</sup> Unless exempted by state guidelines for specific public settings  
<sup>2</sup> Unless directed otherwise by an employee or healthcare provider

California Department of Public Health  
P.O. Box 997377, MS0500 • Sacramento, CA 95899-7377  
[Department Website \(www.cdph.ca.gov\)](http://www.cdph.ca.gov)

PHAB  
Public Health Accreditation Board

# Statewide Face Covering Requirement

- ▶ **Cloth face covering**: Textile (cloth) covers are intended to keep the person wearing one from spreading respiratory secretions when talking, sneezing, or coughing. They are not PPE, and it is uncertain whether cloth face coverings protect the wearer.
- ▶ **Facemask**: Facemasks are PPE and are often referred to as surgical masks or procedure masks. Use facemasks according to product labeling and local, state, and federal requirements. FDA-cleared surgical masks are designed to protect against splashes and sprays and are prioritized for use when such exposures are anticipated, including surgical procedures. Facemasks that are not regulated by FDA, such as some procedure masks, which are typically used for isolation purposes, may not provide protection against splashes and sprays

# Face Covering/Mask Challenges

- ▶ Workers should avoid approaching coworkers or members of the public who are not wearing a face covering for the purpose of attempting to enforce any face-covering recommendation or requirement. In these instances, workers should maintain at least a 6-foot distance from others and raise any concerns to their supervisor.
  - ▶ Supervisors should discuss any concerns with their Human Resources Department for guidance on handling these situations.
  - ▶ Employers should train their workers on what to do in such situations, including how to minimize risk of workplace violence and what to do to get support when de-escalation efforts are unsuccessful in these situations.
- ▶ There may also be limited circumstances where an employer will need to engage in a process with workers and/or customers who claim a disability-related reason for not being able to wear a mask to see if there are accommodations that are effective in maintaining the safety of the workplace. Consider using the following language:
  - ▶ “Following the guidelines (on face coverings or distancing) can protect you and everyone else, so we ask that you follow them.”
  - ▶ “If you don’t have a face covering, we’d be happy to provide one (if available).”
- ▶ For customers and visitors to the workplace:
  - ▶ “We regret that you’re unwilling to follow the guidelines. Please give us a bit of time to organize the area to allow additional physical distance between you and our fellow workers.”
- ▶ In all instances, it is important to focus on minimizing risk and to practice de-escalation measures:
  - ▶ Speak with a calm voice at a normal volume and communicate with posture and expression that the person will be respected.
  - ▶ Settle on a method for calling in support from security or law enforcement if needed.

# Employee Symptom Screenings

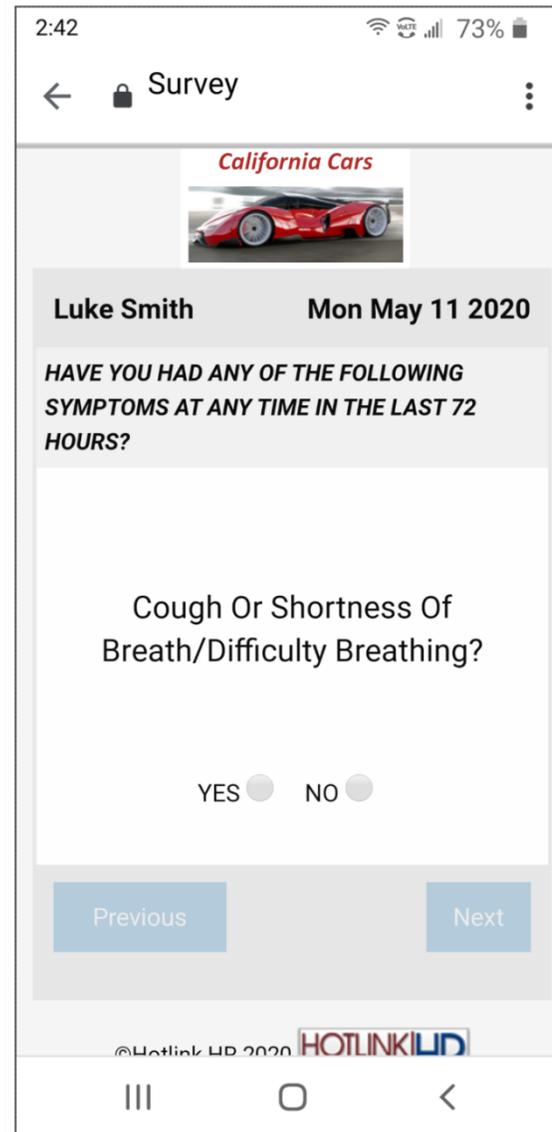
- ▶ Symptom screenings and/or temperature checks required by state guidance.
- ▶ Time must be treated as hours worked for compensation purposes for each day separately.
- ▶ Use a symptom check list
  - ▶ *Sample form available on CNCDA Comply and Fine, Boggs & Perkins LLP*



# Symptoms Checks

HR Hotlink Provides the automated solution now.

- Right from Employee's own iPhone or Android device
- Remember Reasonable Reimbursement Rules for Phones- Perhaps Offer Alternative



The screenshot shows a mobile application interface for a survey. At the top, the status bar displays the time 2:42, signal strength, Wi-Fi, and 73% battery. The app header includes a back arrow, a lock icon, the title "Survey", and a menu icon. Below the header is a banner for "California Cars" featuring a red sports car. The user's name "Luke Smith" and the date "Mon May 11 2020" are displayed. The survey question is: "HAVE YOU HAD ANY OF THE FOLLOWING SYMPTOMS AT ANY TIME IN THE LAST 72 HOURS?". The specific symptom being asked about is "Cough Or Shortness Of Breath/Difficulty Breathing?". There are two radio button options: "YES" and "NO". At the bottom of the survey area are "Previous" and "Next" buttons. The footer contains the text "@Hotlink HR 2020" and the "HOTLINK" logo. The bottom of the screen shows the standard Android navigation bar with three icons: a square, a circle, and a triangle.

# Recognizing the Symptoms

- ▶ EEOC has relaxed certain employee privacy rules in light of the pandemic.
- ▶ Employees must self-check if they have symptoms of COVID-19.
- ▶ CDC's COVID-19 symptom list changes periodically. As of July 29, it includes:
  - ▶ Fever or chills
  - ▶ Cough
  - ▶ Shortness of breath or difficulty breathing
  - ▶ Fatigue
  - ▶ Muscle or body aches
  - ▶ Headache
  - ▶ New loss of taste or smell
  - ▶ Sore throat
  - ▶ Congestion or runny nose
  - ▶ Nausea or vomiting
  - ▶ Diarrhea

# Symptoms Checks-It Is Not All Or Nothing

- ▶ The Symptom Checker is a tool to track the symptoms associated with COVID-19 as set forth by the Center for Disease Control and public health officials.
- ▶ The CDC has established that the symptoms listed in the Symptom Checker should be used as the standard for determining whether employees may have the COVID-19 virus.
- ▶ Having one of the symptoms on any given day triggers a fail for that day on the Symptom Checker. However, failing for that day does not necessarily mean that the employee must remain out of work for any extended period of time. A failure on the symptom check simply means that the employee should not enter the workplace until the employer makes a determination based on the symptoms experienced whether the employee should or should not come to work and whether or not self-quarantine or a test for COVID-19 must be done before returning to work—which may be the same day.

# Symptoms Checks-It Is Not All Or Nothing

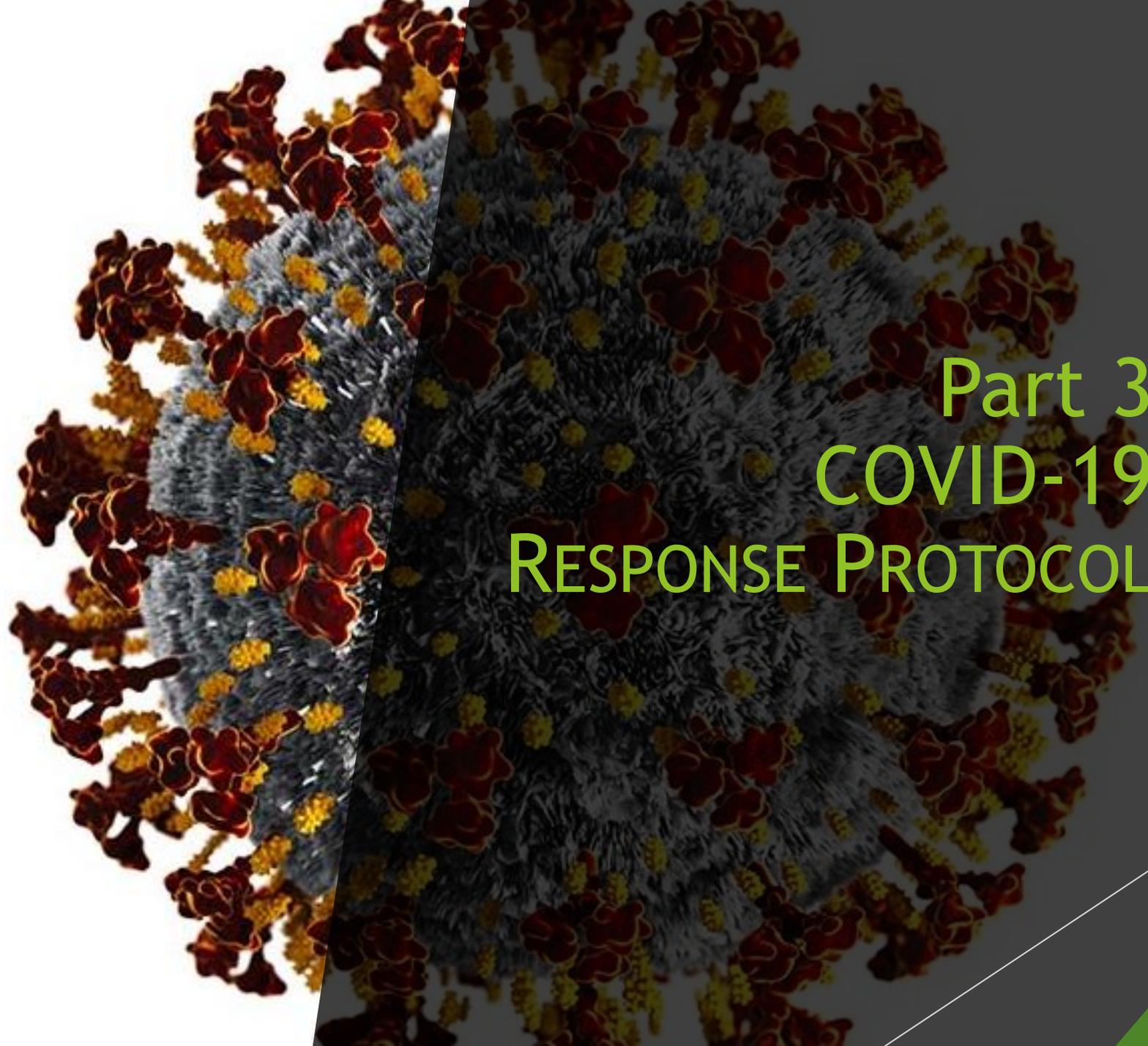
- ▶ In making this decision, the employer should use the rule of reason.
- ▶ This means that if, for example, the employee indicates he/she has body aches one day, and upon inquiry it is discovered that the employee frequently experiences body aches (even prior to the COVID-19 pandemic), then the decision may be to return the employee to work immediately.
- ▶ The same can be said for an employee who has trouble breathing one day and upon inquiry it is determined that the employee has chronic asthma and experiences this frequently.
- ▶ Again, applying a reasonable approach, the employer may determine that the employee's symptoms are not likely associated with COVID-19 and may instruct the employee to return to work. In these circumstances, it may also be prudent to instruct the employee to take extra precautions such as wearing a mask in the workplace, staying away from others and not sharing workspaces or equipment until it is determined whether other symptoms occur.
- ▶ If an employee reports more than one symptom, greater precautions should be taken to prevent the employee from returning to work, especially where the employee has had no history of such symptoms.
- ▶ The attorneys at Fine, Boggs & Perkins LLP are available to answer questions regarding COVID-19 workplace issues without charging for telephone advice.

# Employee Training

- ▶ Required by statewide industry guidance for auto dealerships.
- ▶ Training should include:
  - ▶ Information about COVID-19 and how to prevent it from spreading.
  - ▶ How to self-screen at home.
  - ▶ The importance of not coming to work if an employee has COVID-19 symptoms, has been diagnosed with COVID-19, or has come in recent contact with someone that has tested positive.
  - ▶ The importance of physical distancing and hand washing.
  - ▶ Proper use of face coverings.
  - ▶ Information on paid leave benefits. (discussed later)
  - ▶ Additional elements, discussed in the statewide industry guidance for auto dealerships.
- ▶ Sample training materials are available on CNCDA Comply and from Fine, Boggs & Perkins LLP.

# Other Requirements

- ▶ **Cleaning and Disinfecting Protocols**
  - ▶ Frequent and thorough cleaning of high traffic areas and commonly used surfaces
  - ▶ Use cleaning products approved by EPA for use against COVID-19
- ▶ **Physical Distancing**
  - ▶ Reconfigure spaces and add partitions or visual cues (e.g., floor markings) to ensure distancing of at least six feet.
  - ▶ Close or restrict common areas (e.g., break rooms)
  - ▶ Close self-service water, coffee, and other snack areas.
  - ▶ Adjust rules to limit occupancy no more than 50% of building occupancy.
  - ▶ No handshakes or similar greetings that break physical distance.
- ▶ **Test drives and shuttle service**
  - ▶ Limit test drives only a single customer, with salesperson in opposite back seat. Both should wear face covering.
  - ▶ Limit shuttle services whenever possible.
- ▶ Other detailed requirements discussed in statewide guidance.



Part 3  
COVID-19  
RESPONSE PROTOCOL

# COVID-19 Response Protocol

- ▶ This protocol continues to evolve as state and CDC guidance changes.
- ▶ The statewide COVID-19 Employer Playbook (discussed earlier) outlines various protocols for different types of employee exposure to COVID-19, and it incorporates CDC guidance throughout.
- ▶ Involvement of Local Health Departments is critical:
  - ▶ The Playbook recommends that employers proactively contact their Local Health Departments (LHD) to determine whether and how they should implement testing of their workforce.
  - ▶ The Playbook recommends that you designate at least one “COVID-19 case worker” (i.e., team leader, mentioned above), who should coordinate with the LHD.
  - ▶ The LHD(s) must be notified in the event of an “outbreak” at a dealership (discussed later).

# Positive Test or Symptomology of COVID

- ▶ What if an employee fails a symptom screening and/or tests positive for COVID-19?
  - ▶ Employee should not return to work and must self-isolate immediately.
  - ▶ Employee should be informed to contact their health provider.
  - ▶ Employee should be notified of their leave rights (discussed later).
  - ▶ Employer should identify and inform employees and possibly customers of potential exposure (see previous slide).
    - ▶ Must maintain employee confidentiality when informing co-workers/customers of possible exposure.
  - ▶ Disinfect and clean workspaces of infected employee.
  - ▶ Consider reporting to worker's compensation as a claim.
  - ▶ Report to OSHA, if there is an indication of workplace transmission.
  - ▶ Consider whether to close facility or department.
  - ▶ Report to Public Health Department where required.

# Employee Exposure Protocol

- ▶ What if an employee is exposed to COVID-19, but has no symptoms?
  - ▶ Protocol depends on whether the employee came in “close contact” with another person that tested positive for COVID-19.
    - ▶ “Close contact” occurs if the employee spent more than 15 minutes within 6 feet of the individual with the COVID-19 infection, and such contact occurred within either (i) two days of when the infected person developed symptoms; or (ii) two days of when the test occurred.
  - ▶ If “close contact” occurred, the employee should be instructed to stay at home and quarantine for 14 days from the date of contact with the person that tested positive.
  - ▶ If “close contact” has not occurred, the employee may continue to work (unless they have been instructed by local health officials and/or their health provider to self-isolate).

# Employee Exposure Protocol – Returning to Work

- ▶ Except for rare situations, a test-based strategy is no longer recommended by the CDC to determine when to allow an employee to cease isolation and return to work.
- ▶ Employees should contact Human Resources prior to returning to work to advise that they have met one of the following criterion for their return, and to discuss documentation that may be required prior to return to company premises.

# Employee Exposure Protocol – Returning to Work

## POSTIVE AND/OR SYMPTOMATIC EMPLOYEES

### **Mild to moderate illness (not severely immunocompromised and not hospitalized)**

- ▶ Return to work is permitted at least 10 days have passed since symptoms first appeared;
- ▶ At least **24 hours** have passed since last fever without the use of fever-reducing medications; and
- ▶ Symptoms have improved.

### **Severe to critical illness (severely immunocompromised or hospitalized)**

- ▶ Return to work is permitted at least 20 days have passed since symptoms first appeared;
- ▶ At least **24 hours** have passed since last fever without the use of fever-reducing medications; and
- ▶ Symptoms have improved.

***Note that the 24-hour period replaces a previous 72-hour period.***

# Employee Exposure Protocol – Returning to Work

## **ASYMPTOMATIC POSITIVE EMPLOYEES**

▶ Employees who were asymptomatic throughout their infection may return to work when at least 10 days have passed since the date of their first positive viral diagnostic test.

## **ASYMPTOMATIC NEGATIVE EMPLOYEES**

▶ Employees should quarantine at home for 14 days after the last known close contact with the person that tested positive. A dealership may ask its Local Health Department for a shorter quarantine period for an employee.

# Shutting Down the Facility

- ▶ In most cases, you do not need to shut down your facility.
- ▶ If it has been less than 7 days since the sick employee has been in the facility, close off any areas used for prolonged periods of time by the sick person and:
  - ▶ Wait 24 hours before cleaning and disinfecting to minimize potential for other employees being exposed to respiratory droplets. If waiting 24 hours is not feasible, wait as long as possible.
  - ▶ During this waiting period, open outside doors and windows to increase air circulation in these areas.
  - ▶ If it has been 7 days or more since the sick employee used the facility, additional cleaning and disinfection is not necessary. Continue routinely cleaning and disinfecting all high-touch surfaces in the facility.
  - ▶ If you feel there is an outbreak (multiple cases that appear to be contracted at work), then it may be a good idea to have all non-symptomatic employees not work until they get the results of a COVID test that is negative.
- ▶ Again, all symptomatic employees may not return to work must satisfy the Return to Work Protocol.

# Reporting “Outbreaks” to Local Public Health Dept.

- ▶ If there is an “outbreak” at your dealership (i.e., three or more employees from different residences test positive for COVID-19 within a two-week period), your dealership must contact relevant Local Health Department(s).
- ▶ Workers in a workplace may live in counties/jurisdictions outside of where the workplace is located. When there is an outbreak in a workplace, employers should contact the local Public Health Department in any jurisdiction where a COVID-19 positive worker resides and let them know about the outbreak.
- ▶ Your dealership may be asked by Public Health Department to provide additional information on the workers and other details that could help inform the investigation and determine which other workers in the workplace may be at risk of COVID-19 infection.



# Part 4 EMPLOYEE BENEFITS

# Employer Leave Obligations

- ▶ Most employees are entitled to leave due to COVID-19 circumstances:
  - ▶ California requires 3 days of paid sick leave.
  - ▶ Local ordinances may require additional sick leave.
  - ▶ The Families First Coronavirus Response Act (FFCRA) allows many employees to take up to 80 hours of paid sick leave and an additional 10 weeks of extended paid family and medical leave (discussed later).
  - ▶ 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.

# The Family First Coronavirus Response Act (FFCRA)

- ▶ The FFCRA provides that employees of covered employers (fewer than 500 employees) are eligible for:
  - ▶ Two weeks (up to 80 hours) of paid sick leave at the employee's *regular rate of pay* if the employee is unable to work because the employee is quarantined and/or experiencing COVID-19 symptoms.
    - ▶ Compensation capped at \$511 per day.
  - ▶ Two weeks (up to 80 hours) of paid sick leave at *two-thirds the employee's regular rate of pay* because the employee needs care for someone under quarantine or care for a child that is home due to a COVID-19 school/day care closure.
    - ▶ Compensation capped at \$200 per day.
  - ▶ Ten additional weeks of paid expanded family and medical leave at *two-thirds the employee's regular rate of pay* when an employee is unable to work due to a need to care for a child whose school or childcare provider is closed due to COVID-19.
    - ▶ Compensation capped at \$200 per day.

# Additional FFCRA Considerations

- ▶ How should the amount of an employee's pay be calculated?
  - ▶ "Regular rate of pay" includes commission pay and is generally calculated based average hourly wage over last 6 months.
- ▶ Am I reimbursed by the IRS for providing paid leave?
  - ▶ Yes, if the leave is required by the FFCRA.
- ▶ I received a PPP loan, am I still entitled to reimbursement?
  - ▶ Yes.
- ▶ Is the FFCRA leave in addition to other leave the employee may have, or does it run concurrently?
  - ▶ The 10 days of paid sick leave is additional leave.
  - ▶ The 10 weeks of paid expanded family and medical leave is a new type of FMLA leave. Employees that have already exhausted FMLA leave may not be entitled to this leave.

Part 5  
OTHER EMPLOYEE  
CONSIDERATIONS



# 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 reasonable accommodations such as time off or additional distancing in the workplace.
- ▶ Handle like any other disability accommodation- interactive process.
- ▶ Handle discreetly to protect privacy.
- ▶ Don't force them unilaterally to go home and not work.
- ▶ Follow their health care provider's advice.

# How Do We Get People to Return to Work?

- ▶ People are afraid of coming back to work because they have their own health risks due to conditions that make them more susceptible to COVID-19: e.g., heart conditions, lung conditions, diabetes, age, mental issues (panic attacks, fear, depression) etc.
- ▶ These situations must be considered on a case-by-case basis as the accommodation process and determination, as well as potential FMLA/CFRA leave, may be implicated.
- ▶ Dealers should contact competent employment counsel to seek advice on your particular facts.

# How Do We Get People to Return to Work?

- ▶ People just don't want to be at risk or use it as an excuse to not return even though they have no risk factors based on their age or health, or they are afraid of "bringing something home."
  - ▶ In almost all circumstances absent an actual illness, disability or the need to care for a child whose school/daycare is closed, or to care for an ill immediate family member, a simple fear or precaution against bringing the virus home is not a basis for a mandatory leave.

# How Do We Get People to Return to Work?

- ▶ People who turn down a new job — or their old one — because of coronavirus concerns may be able to continue collecting unemployment insurance, according to new guidelines from the California Employment Development Department.
- ▶ Normally people who turn down a job offer are denied unemployment benefits, unless the position is not “comparable suitable” employment.
- ▶ The EDD says a job could be deemed unsuitable if the workplace has not met state or county requirements for reopening, or the workplace is unsafe.
- ▶ A job offer could be deemed unsuitable if the employee is older than 65, has a weakened immune system or has a chronic health condition that means COVID-19, the coronavirus disease, poses more of a threat.
- ▶ The job being offered on recall could also be deemed unsuitable if it pays less than previously.

# How Do We Get People to Return to Work?

- ▶ HOW DO WE GET THEM BACK?
- ▶ Put the recall in writing. Give a deadline to report for work
- ▶ Inform them that they have the same or substantially similar job, pay and benefits.
  - ▶ Doing so may give you a cure to PPP “head count” failures
- ▶ Inform them that they may lose their right to unemployment if they turn down the job.
  - ▶ The PPP provisions REQUIRE employers to inform the State Unemployment authorities within 30 days of any rejected offer to return to work

# How Do We Get People to Return to Work?

- ▶ Inform them that you are following all the rules regarding Reopening Protocol and Social Distancing and have a written plan in place.
- ▶ Inform them that they will no longer be considered eligible for recall if they turn down the job and unemployment only lasts until July 31, 2020 and at that time there will be a lot of people seeking any open positions.
- ▶ Instruct them that if they don't come back and wish to remain subject to recall they must put their reasons in writing to you and they need to let you know if any health care provider has indicated that they should not return or if they have any condition which prohibits them from returning.
  - ▶ This gives you the information you need to know if an “interactive discussion” is required to consider any “reasonable accommodation” for a medical condition.
- ▶ A sample recall letter is available also available at <https://www.employerlawyers.com/legal-updates/>.
- ▶ Send EDD Notification that employee refused reinstatement (sample notice available at Fine, Boggs & Perkins LLP, HR Hotlink and CNCDA).

# I Refuse To Do A Symptom Check Or Let You Take My Temperature.

- ▶ EEOC says this is a request for reasonable accommodation.
- ▶ Hold an interactive discussion with employee.
- ▶ See what can be done to accommodate.
  - ▶ For example:
    - ▶ Let them know that results are not kept and are confidential.
    - ▶ Let them conduct the screening themselves
- ▶ Accommodate for disability (including pregnancy) and/or religious reasons.

The image shows a high-angle view of a parking lot packed with cars of various colors. A dark, semi-transparent rectangular overlay covers the right side of the image, containing the text 'Part 6 OTHER IMPORTANT ISSUES' in a light green, sans-serif font. The text is arranged in three lines: 'Part 6' on the top line, 'OTHER' on the middle line, and 'IMPORTANT ISSUES' on the bottom line. The background image is slightly blurred, emphasizing the text overlay.

Part 6  
OTHER  
IMPORTANT ISSUES

# Other important issues

## ▶ Paycheck Protection Program

- ▶ Discussed in detail in last webinar. (Recording available on CNCDA Comply).
- ▶ Union neutrality requirement does not apply to PPP loans.
  - ▶ Neutrality requirement applies to a separate loan program authorized by the CARES Act.

## ▶ New stimulus package considered by Congress

- ▶ Enhanced unemployment benefits created by CARES Act ended on July 31.
- ▶ Congress is considering a new stimulus package that may extend the enhanced unemployment benefits and provide other relief (e.g., further stimulus checks, state/local aid).

## ▶ More shutdown orders?

- ▶ In July, the state closed certain businesses (e.g., bars, indoor dining, hairdressers)
- ▶ It's possible that state and local governments may impose restrictions impacting dealership operations, particularly if COVID-19 cases increase in California. Such orders have not yet been issued.
- ▶ CNCDA will immediately inform our members in the event such orders are issued.

Thank you!

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