

Coronavirus Laws and Your Dealership: Part VI

December 15, 2020

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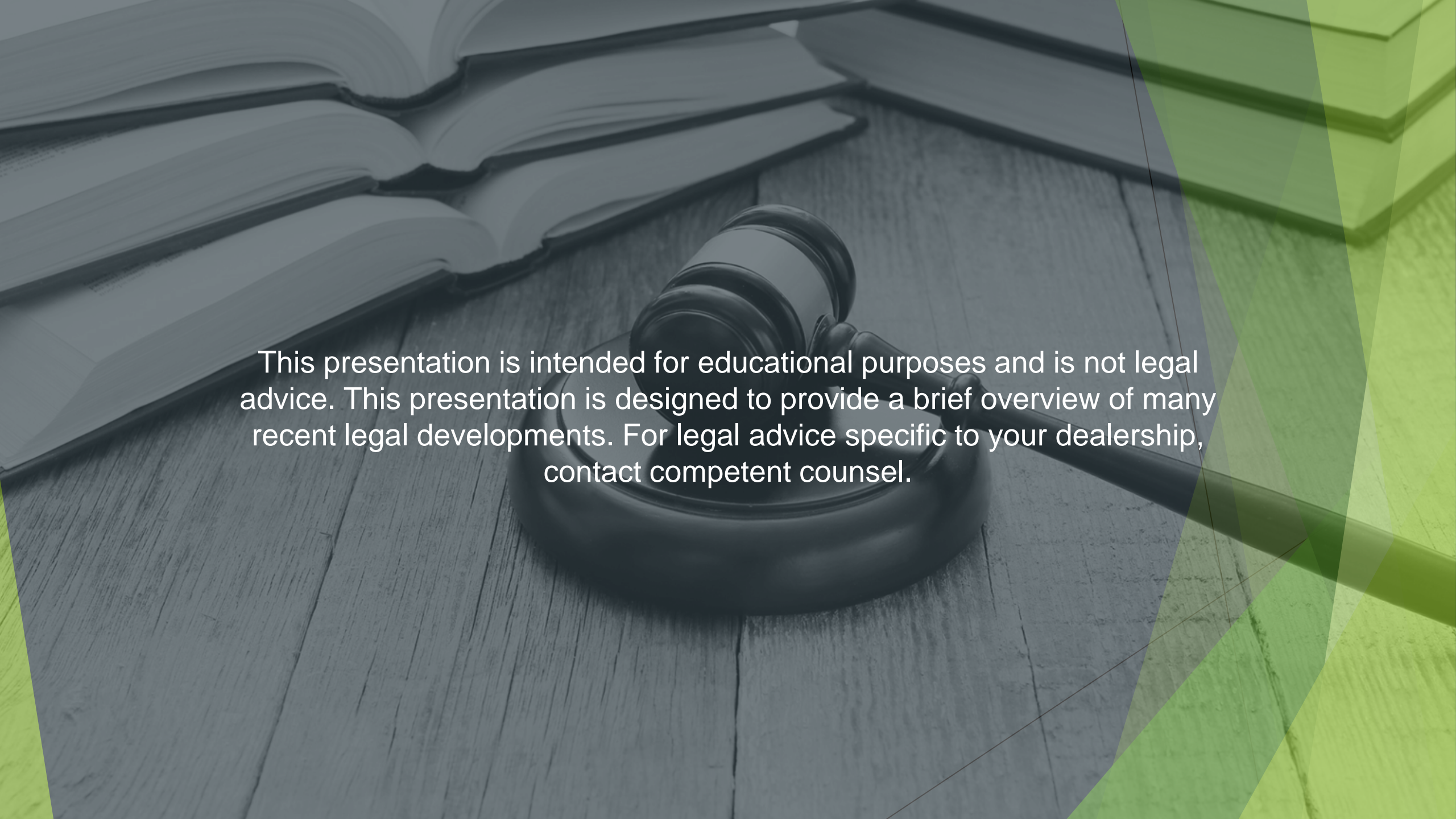
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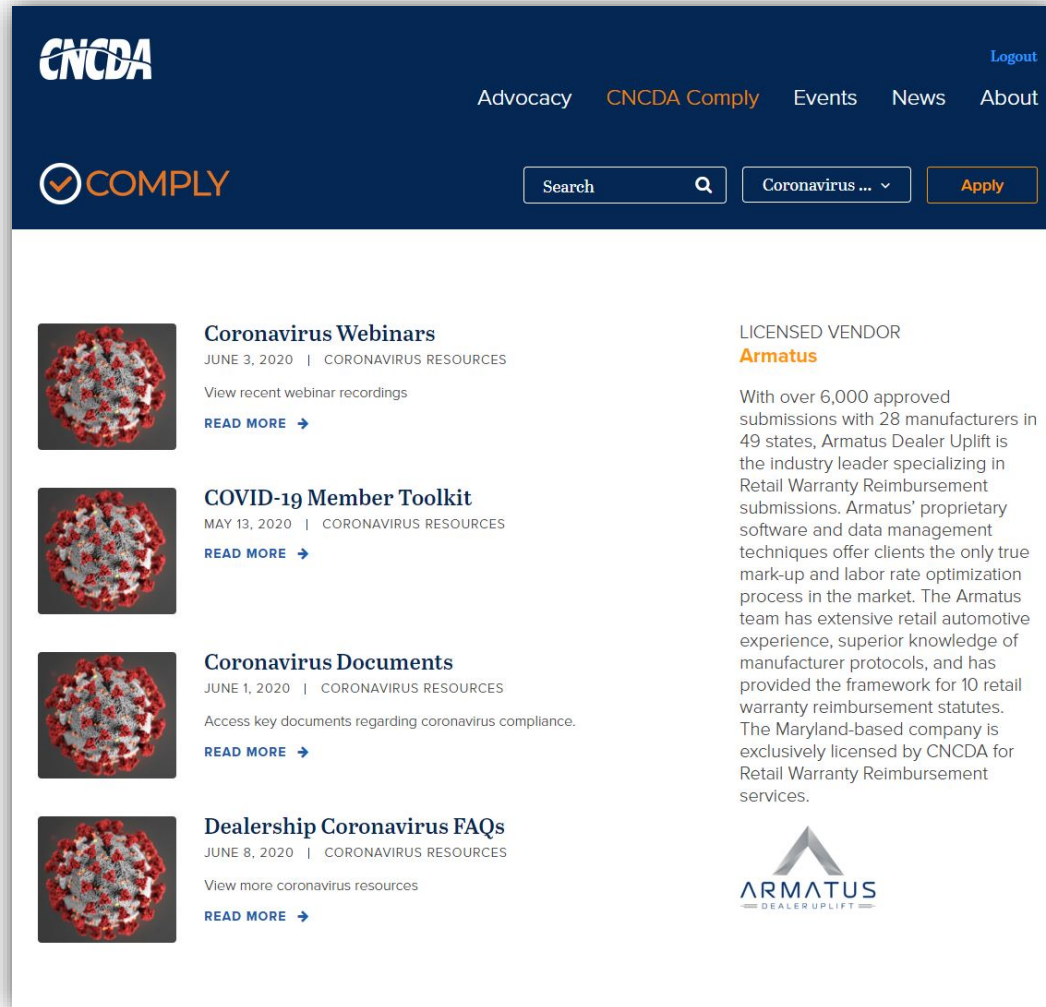
What are we covering today?

1. Status of Dealership Operations
2. COVID-19 Response Protocol
3. Employee Benefits
4. Cal/OSHA Requirements
5. Other Employment Considerations
6. Review

The image features a wooden gavel resting on a wooden surface next to an open book. The gavel is positioned diagonally, with its head resting on the surface. The book is open, showing its pages. The background is a dark, textured wood. On the right side, there is a green geometric overlay consisting of several overlapping, semi-transparent shapes in various shades of green, creating a modern, abstract design.

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 with a coronavirus icon, a title, a date, and a 'READ MORE' link. To the right of these cards is a 'LICENSED VENDOR' section for 'Armatus', featuring a paragraph of text and the Armatus logo.

CNCDA Logout

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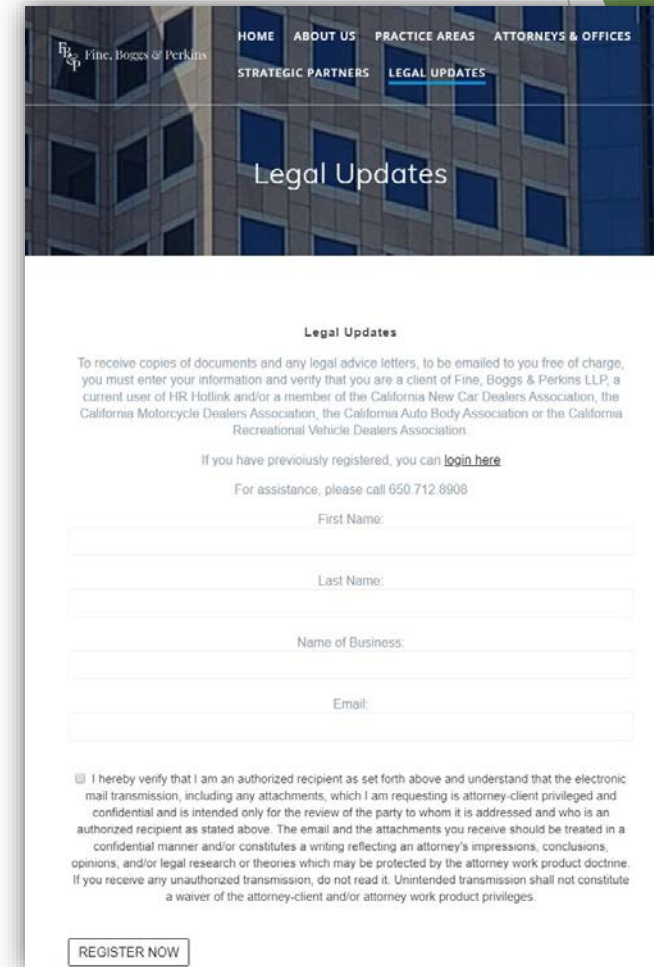
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ARMATUS
DEALER UPLIFT

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

Fine, Boggs & Perkins

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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
- ▶ Frequently Updated

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 the link and for some parts of the guidance; familiarize yourself with the guidance before using the 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 guidance](#).
- Training and communication with workers and worker representatives on the plan.
- A process to check for compliance and to document any direct observations.
- A process to investigate COVID-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 workplace training

Part 1
STATUS OF
DEALERSHIP
OPERATIONS

Status of Dealership Operations



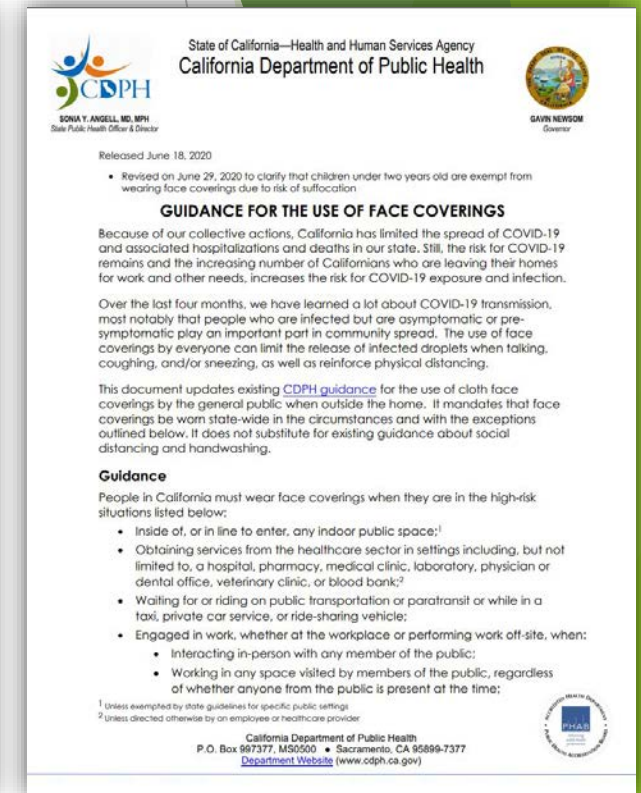
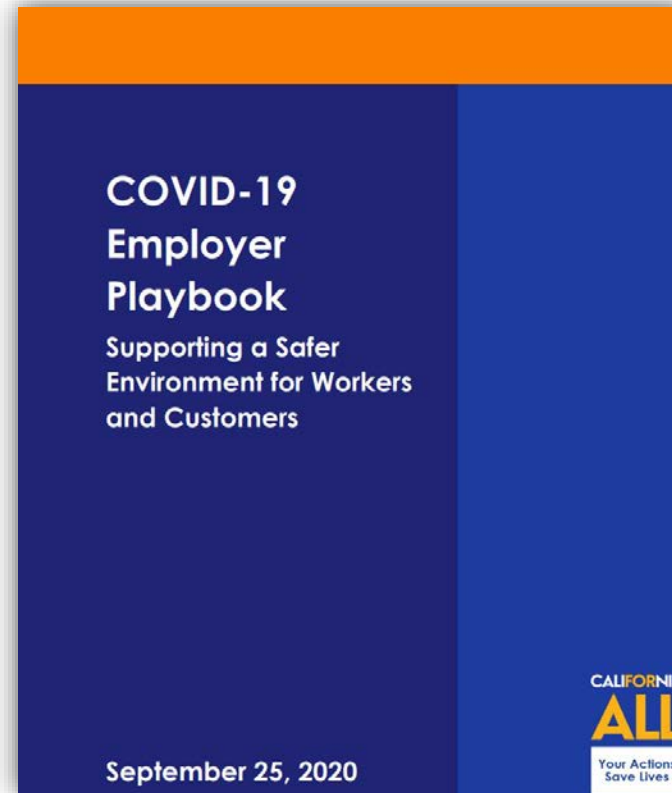
- ▶ Most California dealerships are now subject to the state's Regional Stay Home Order.
- ▶ The Regional Stay Home Order is triggered in a region when ICU availability falls below 15%. It is currently triggered in the following regions:
 - ▶ Southern California: Imperial, Inyo, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Ventura
 - ▶ San Joaquin Valley: Calaveras, Fresno, Kern, Kings, Madera, Mariposa, Merced, San Benito, San Joaquin, Stanislaus, Tulare, Tuolumne
 - ▶ Greater Sacramento: Alpine, Amador, Butte, Colusa, El Dorado, Nevada, Placer, Plumas, Sacramento, Sierra, Sutter, Yolo, Yuba
- ▶ Order preemptively implemented by the following Bay Area jurisdictions:
 - ▶ San Francisco, Alameda, Contra Costa, Marin, Santa Clara, Monterey, and City of Berkeley

Regional Stay Home Order Restrictions

- ▶ Allows “critical infrastructure sector” businesses (such as dealerships) to continue to operate, subject to various requirements.
 - ▶ Dealerships must observe the COVID-19 Industry Guidance and Checklist (discussed later)
- ▶ Regional Stay Home Order imposes stringent restrictions on retail businesses:
 - ▶ Indoor operations limited to 20% capacity.
 - ▶ When calculating capacity limits, staff is generally not included.
 - ▶ Exception: Santa Clara County (staff included)
 - ▶ Bottom line: capacity limitations must be imposed to maximize social distancing.
 - ▶ Customer access to indoor spaces “must be strictly metered” to ensure compliance.
 - ▶ The sale of food, beverages, and alcohol for in-store consumption is prohibited.
 - ▶ Does not prohibit customers from purchasing food and consuming it outside.
 - ▶ Does not prohibit employees from bringing their own food to work to eat.
- ▶ CNCDA recommends that dealers observe the retail business requirements for their retail operations (vehicle and parts sales)

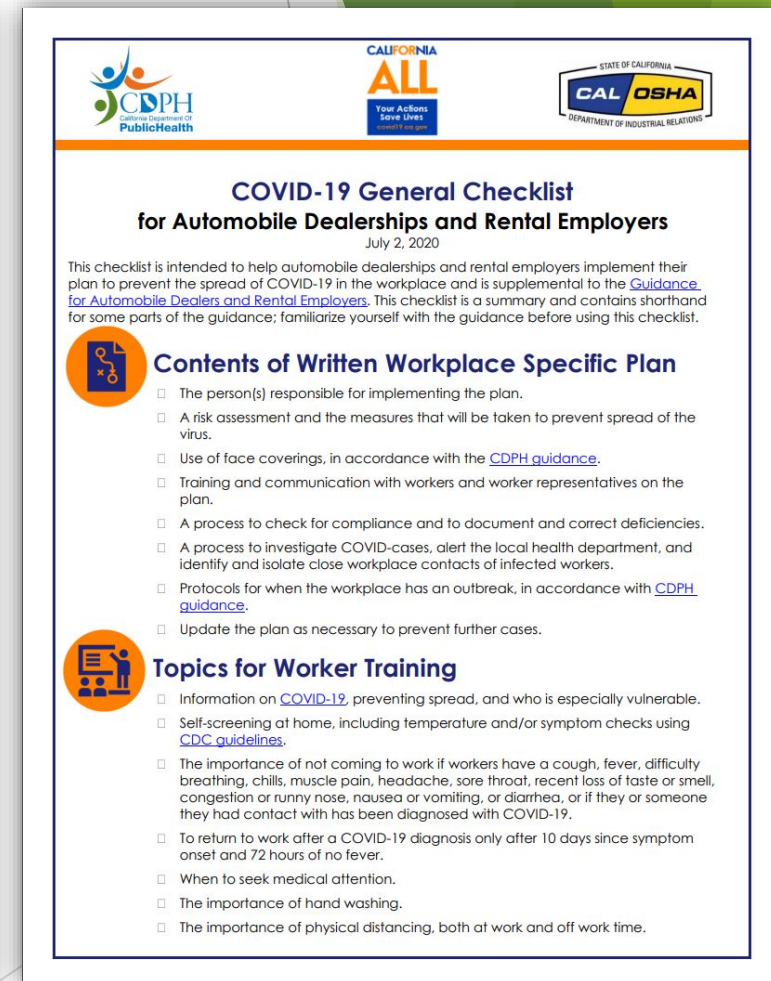
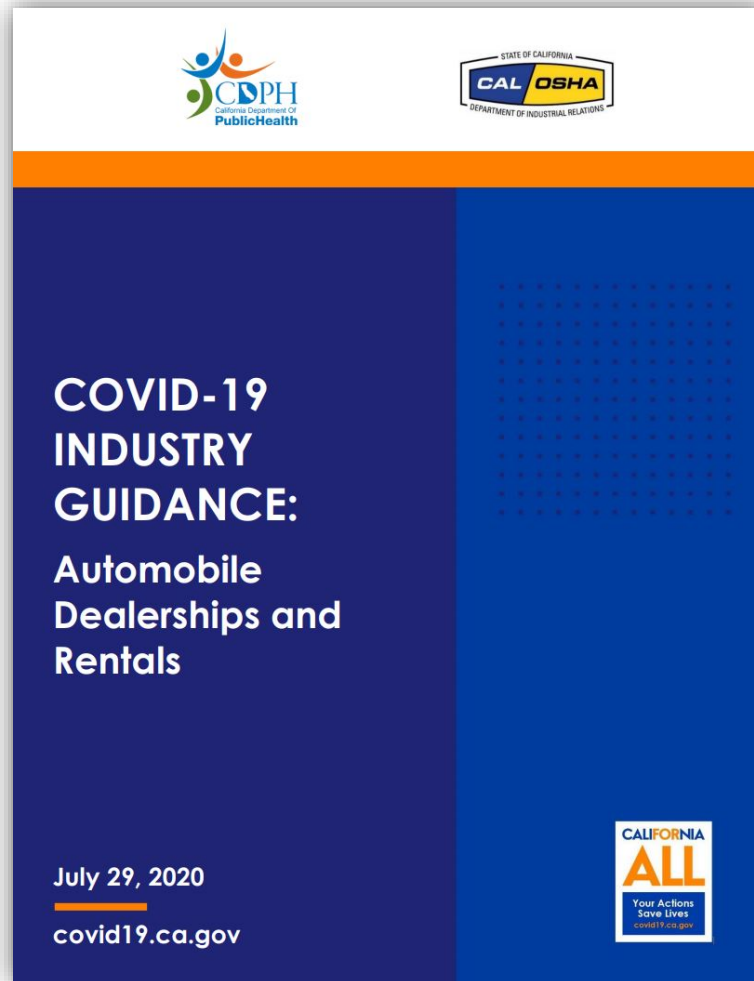
Statewide COVID-19 Employer Playbook and Face Covering Requirement

- ▶ 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
- ▶ Mirrors elements of the Cal/OSHA rule, discussed later.
- ▶ 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 29, 2020
- ▶ Guidance applicable when not in conflict with more stringent restrictions (stay home order, local orders)
- ▶ <https://covid19.ca.gov/industry-guidance/>

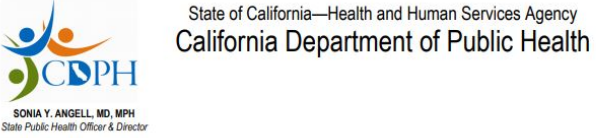


Always Enforce the Basics!

- ▶ Businesses are increasingly being penalized by fire marshals, health inspectors, and other local officials for non-compliance with health requirements.
- ▶ Enforcement may involve warnings, monetary fines, and/or an order to temporarily shut down a business.
- ▶ By far, the biggest reason why business are being penalized are non-compliance with face covering requirements and overcrowding.
- ▶ **The proper use of face coverings must be enforced on an ongoing basis. Compliance with this requirement is the most visible example of how serious your dealership is adhering to health requirements.**

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/>
- ▶ Cal/OSHA: employees should also wear face coverings in non-public spaces; exceptions:
 - ▶ Alone in a room (i.e., office)
 - ▶ Eating/drinking while 6 feet apart and proper ventilation
 - ▶ Medical conditions



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

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

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;¹
- 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;²
- 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;

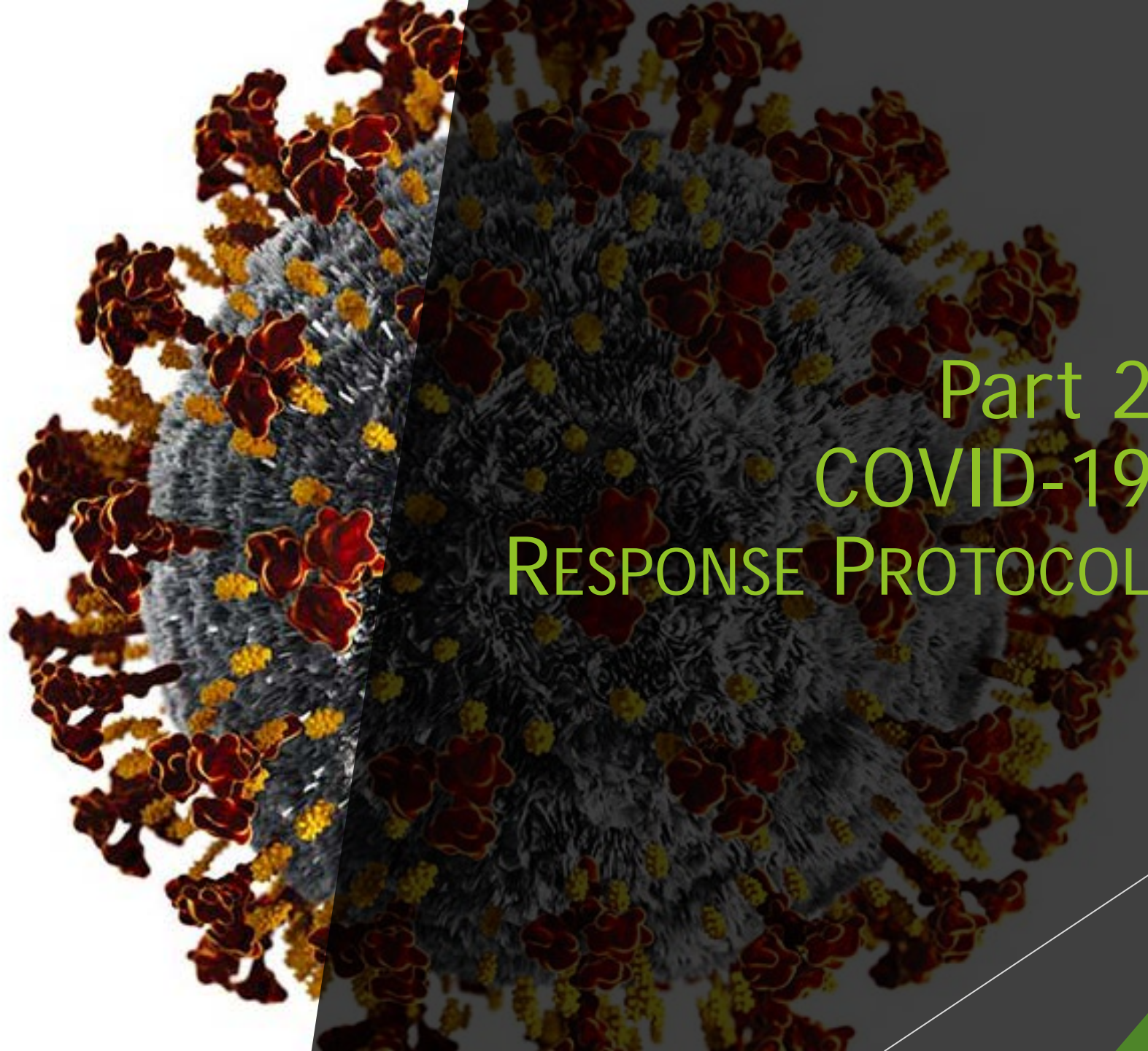
¹ Unless exempted by state guidelines for specific public settings
² Unless directed otherwise by an employee or healthcare provider

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)



Local Orders

- ▶ Various local jurisdictions have adopted health requirements applicable to dealerships:
 - ▶ Los Angeles County
 - ▶ San Diego County
- ▶ When a local order and a state order conflict, follow the most restrictive order.
- ▶ Visit your city or county website to learn about any restrictions that may be applicable to your dealership.



Part 2
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 of COVID

- ▶ What if an employee 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.
 - ▶ Must maintain employee confidentiality when informing co-workers/customers of possible exposure.
 - ▶ Disinfect and clean workspaces of infected employee.
 - ▶ Notify potentially exposed employees of the plan to disinfect and stop the transmission of the virus.
 - ▶ Notify union representative (if applicable).
 - ▶ Report to OSHA, if there is an indication of workplace transmission.
 - ▶ If an 'outbreak' is occurring (discussed later), take additional precautions like notifying local health department.
 - ▶ Report to Workers' Compensation as a claim.
 - ▶ Under SB 1159, employers are required to provide notice to the claims administrator of any employee whom the employer knows or should know has tested positive for COVID-19 within three days.

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 a cumulative total of 15 minutes over any 24-hour period 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 10 days from the date of contact with the person that tested positive.
 - ▶ The quarantine period applies regardless of whether the employee tests negative.
 - ▶ 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

- ▶ Don't rely on tests. 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.
- ▶ Cal-OSHA ETS Standard specifically states that “A negative COVID-19 test shall not be required for an employee to 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.

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 10 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.
- ▶ 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 3
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.
 - ▶ Cal/OSHA Leave Requirements (Discussed Later)

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.

Additional FFCRA Considerations

- ▶ FFCRA currently set to expire on December 31, 2020.
- ▶ Congress may extend the FFCRA into the new year.
- ▶ If Congress fails to act, the state legislature may act.
- ▶ Stay tuned.



Part 4 CAL/OSHA EMERGENCY STANDARDS

Scope of Regulations

▶ History

- ▶ Effective immediately upon approval on November 30, 2020

▶ Applicability

- ▶ All employers and places of employment, except single-employee locations and work-from-home locations
- ▶ This includes all dealership facilities in the State of California

Cal/OSHA Emergency Standards

- ▶ Key Requirements
 - ▶ Written COVID-19 Prevention Program
 - ▶ Outbreaks Trigger Special Responses
 - ▶ Major Outbreaks Trigger More Obligations
- ▶ Much of it overlaps with preexisting employer obligations, but requirements involving employee testing and leave are new.

Cal/OSHA Emergency Standards

▶ Key Requirements

- ▶ Written COVID-19 Prevention Program
 - ▶ All employers must have one
 - ▶ May be part of a broader IIPP or a standalone program
- ▶ Outbreaks Trigger Special Responses
 - ▶ New testing requirements
- ▶ Major Outbreaks Trigger More Obligations
- ▶ Paid Leave

Requirements for the COVID-19 Prevention Program

A) System for communicating

- ▶ All communications must be in a form readily understandable by employees
 - ▶ Plain language
 - ▶ Consider non-English translation requirements
- ▶ Employees should be free to report, without fear of reprisals, any COVID-19-related details
 - ▶ Symptoms
 - ▶ Possible Exposures
 - ▶ Possible Hazards in the workplace
- ▶ Communications should include procedures or policies for accommodating those employees with conditions that put them at risk for severe COVID-19 illness
- ▶ Communications should include information about access to testing
 - ▶ How and where the employee can obtain testing
 - ▶ If testing is required under the Standards, then employees must be informed of the reason for the testing and the possible consequences of a positive test

COVID-19 Prevention Program Requirements

B) Identification of COVID-19 Hazards

- ▶ “Treat all persons—regardless of symptoms or negative COVID-19 test results—as potentially infectious”
- ▶ Employees should be permitted to participate in the identification and evaluation of potential hazards
 - ▶ And their authorized employee representatives, if any
- ▶ A process for screening employees for and responding to COVID-19 symptoms
 - ▶ May be required of employees before they come to work
 - ▶ If done at work, both screener and screened employee shall wear face coverings and take precautions to avoid contact
- ▶ Specific identification of interactions and areas that could lead to exposures
 - ▶ Activities
 - ▶ Processes
 - ▶ Equipment
 - ▶ Materials
- ▶ Examples
 - ▶ When and where do people congregate in the workplace?
 - ▶ During what activities are people more likely to come into contact with each other?
 - ▶ How can we minimize incidental gatherings, such as in and around entrances, bathrooms, aisles, elevators, and other waiting areas?
 - ▶ How do customer, visitor, and vendor interactions play into this?
 - ▶ How can we maximize airflow in interior and exterior locations? Filtration options?
- ▶ Periodic inspections should be conducted to ensure up-to-date analysis and incorporation of dynamic scientific and regulatory guidance to prevent infections

COVID-19 Prevention Program Requirements

C) Investigation and Response Process

- ▶ Must identify timing of each case and exposure
 - ▶ Day any COVID-19 case was last in the workplace during the High-Risk Exposure Period
 - ▶ Date of diagnosis or symptom appearance
- ▶ Identify those with possible exposures, including all workplace locations
 - ▶ In what activities was the COVID-19 Case involved?
 - ▶ In which workplaces?
 - ▶ And with whom did he or she interact?
- ▶ Notification of potential exposures, without identifying information, to employees and authorized representatives
 - ▶ Contractors and other employers, too
- ▶ Must offer COVID-19 Testing to all employees who had potential COVID-19 Exposure in the workplace
 - ▶ Testing must be during working hours (e.g., on-the-clock)
 - ▶ Testing must be at no cost to employees
- ▶ Must consistently protect against disclosure of personally-identifying information
 - ▶ Must collect such information as part of the investigation
 - ▶ But cannot release it except under specific circumstances, such as disclosure to Local Health Department (LHD) or other state or local agencies

COVID-19 Prevention Program Requirements

D) Correction of Hazards

- ▶ Engineering solutions (markings, barriers, etc.)
 - ▶ Cleanable, solid partitions to reduce particle transmission
 - ▶ Maximize air ventilation and filtering to maximize outside air where weather, temperature, and other air-quality concerns do not interfere and balancing them where they do
 - ▶ Disinfection
 - ▶ Identify common surfaces
 - ▶ Prohibit sharing surfaces, tools, etc.
 - ▶ Disinfect high-touch surfaces (steering wheels, handles, seatbelts, armrests, shifters, etc.) between users
 - ▶ Handwashing facilities
 - ▶ PPE, such as masks, gloves, goggles, face shields
- ▶ Limitations on occupancy

COVID-19 Prevention Program Requirements

E) Training and Instruction must include:

- ▶ Policies and procedures of the employer to protect against transmission
- ▶ Available government benefits must be disclosed
 - ▶ Workers' Compensation
 - ▶ FFCRA paid leaves
 - ▶ Internal leave policies, including those provided by contract, handbook, or labor agreement
 - ▶ Other state or local programs, such as Unemployment Insurance, State Disability Insurance, Paid Family Leave, etc.
 - ▶ OSHA-required testing (at no cost)
- ▶ Information regarding the nature of viral transmission: airborne spread through droplets through hands to mouth/nose/eyes
- ▶ Physical distancing and its importance
- ▶ Importance of individual and collective hygiene (washing hands, sanitizing surfaces, etc.)
- ▶ The need for face coverings, but also the need to combine them with other protections (such as distancing, regular hand-washing, and common sense) to achieve maximum benefits
- ▶ How to identify and recognize COVID-19 symptoms and the importance of staying at home if symptom are present

COVID-19 Prevention Program Requirements

F) Physical Distancing

- ▶ All employees should be separated from all other persons by at least 6 feet
- ▶ Limited exceptions
 - ▶ Where not physically possible
 - ▶ Momentary exposure while persons are in movement
- ▶ Methods of achieving distancing include
 - ▶ Telework or other remote work arrangements
 - ▶ Reduction of occupancy in given areas at given times, including customers
 - ▶ Visual cues, such as signs and floor markings to foster separations, including direction-of-travel indicators
 - ▶ Staggering of employee arrival, departure, work, and break times
 - ▶ Adjusting workflows and processes to limit interactions

COVID-19 Prevention Program Requirements

G) Face Coverings

- ▶ **Worn indoors and Outdoors if within six feet**
- ▶ **Exceptions**
 - ▶ **Alone in a room**
 - ▶ **While eating and drinking, provided 6-foot distancing and outside air supply to area**
 - ▶ **Wearing respirator**
 - ▶ **Disability**
 - ▶ **But should wear alternative, if possible**
 - ▶ **If you think there are specific Dealership tasks that cannot be done while wearing a face covering, seek guidance**
- ▶ **Publicize requirement to customers and others**
 - ▶ **Develop procedures to minimize exposure to individuals not wearing face coverings**

COVID-19 Prevention Program Requirements

H) Records and Reporting

- ▶ Report to Local Health Department (LHD) as required
 - ▶ County requirements may vary, but generally based on “outbreak” as defined as 3 or more cases within 14-day period
- ▶ Report to OSHA
 - ▶ Serious illnesses or death
- ▶ Maintain records of implementation program
- ▶ Written plan available for inspection
 - ▶ To the Division (Cal/OSHA)
 - ▶ To employees and any authorized representatives
- ▶ Record of all Cases
 - ▶ Name, Contact Information, Occupation
 - ▶ Location where worked
 - ▶ Dates
 - ▶ Last day at workplace
 - ▶ Date of Test
 - ▶ Maintain confidential

COVID-19 Prevention Program Requirements

I) Exclusion Rules

- ▶ Exclude all COVID cases
 - ▶ Those with COVID-19 diagnosis (positive test or other physician diagnosis)
 - ▶ Those covered under state or local quarantine or isolation order, including those who have had close contact with someone with COVID-19 during their High-Risk Exposure Period
- ▶ Exposed Individuals must be excluded for 14 days after last-known exposure to COVID case during the High-Risk Exposure Period. (Note OSHA inconsistency)
- ▶ Earnings, Seniority, and all other Employee Rights and Benefits must be continued during exclusion period
 - ▶ Continue and maintain earnings, seniority, and benefits as though not excluded
 - ▶ May use available PTO and Paid Sick Leave to meet this requirement
 - ▶ May use benefits payments from public sources, too, such as SDI and Unemployment Insurance
 - ▶ Potentially Workers' Compensation, too
 - ▶ Potentially key exceptions:
 - ▶ When employee is otherwise unable to work other than for exclusion
 - ▶ When employer demonstrates exposure is not work-related, such as family exposures or exposures at social gatherings or protests

COVID-19 Prevention Program Requirements

J) Return to Work Criteria

- ▶ COVID Cases with Symptoms
 - ▶ 10 days from onset of symptoms, provided at least 24 hours since after fever eliminated (without medication) and other symptoms improved
- ▶ COVID Cases without Symptoms
 - ▶ 10 days from test collection for first positive test
- ▶ Employers cannot require negative test as condition for returning from exclusion
- ▶ Return to work may be delayed by an order from a local or state health official, if any
 - ▶ If such an order provides a return-to-work time frame, it must be followed
 - ▶ If no timeframe is provided, then return may be 10 days from isolation order or quarantine order
- ▶ Cal/OSHA may allow early return if removal of employee would be a risk, but with protections required to effectively control against potential transmission in the workplace, such as isolation within the workplace or other measures, such as respiratory protection

Outbreaks Trigger Special Responses

What is an “outbreak”?

- ▶ Begins when there are three or more Cases within 14-day period in an “exposed workplace”
 - ▶ Locations used or accessed by COVID-19 Case during high-risk exposure period
 - ▶ May include bathrooms, walkways, hallways, aisles, break rooms, waiting areas
 - ▶ Excludes “areas where masked workers momentarily pass through the same space without interacting or congregating”
 - ▶ Exposed Workplace may not be the entire Workplace (e.g., building); only those areas where the COVID-19 Case was present during the High-Risk Exposure Period.
- ▶ Expires when 14-day period without new cases passes

Outbreaks Trigger Special Responses

If an outbreak occurs, testing obligations are triggered

- ▶ Employer-provided Testing to all employees in “Exposed Workplace” who were present during the period of an outbreak
- ▶ No cost to employees
 - ▶ During work hours (on the clock)
- ▶ All employees must be tested immediately and then one week later
 - ▶ Continued testing at least once a week, or more if recommended
 - ▶ Negative tests do not shorten restriction periods
- ▶ Does not need to occur on-site

Outbreaks Trigger Special Responses

If an outbreak occurs, investigation and notification requirements apply:

- ▶ Investigation of workplace-related factors contributing to outbreak
 - ▶ Hazard Corrections required
 - ▶ Leave Policies and Practices
 - ▶ Discouraging absences despite sickness
 - ▶ Testing policies
 - ▶ Air circulation, filtration
 - ▶ Physical distancing shortcomings
 - ▶ Review every 30 day or more often as new information comes up
- ▶ Notification
 - ▶ Local Health Department must be notified within 48 hours, if not sooner
 - ▶ Seek guidance from LHD
 - ▶ Total number of cases, and demographic information, plus other information as requested

Major Outbreaks Trigger More Obligations

- ▶ “Major Outbreak” Defined
 - ▶ Begins upon 20 or more COVID cases within 30-day period
 - ▶ Expires with 14 case-free days
- ▶ Ordinary “Outbreak” rules continue to apply
 - ▶ Testing requirements are twice-weekly, or more frequently as indicated
- ▶ Investigation of Hazards is more robust
 - ▶ Employer must consider whether to halt some or all operations in the workplace until hazards have been corrected

Paying Employees When They Are Excluded from Work

- ▶ Sick leave requirement in Emergency Standards:
 - ▶ If an employee is able and available to work, the employer must continue to provide the employee's pay and benefits.
 - ▶ An employer may require the employee to exhaust paid sick leave benefits before providing exclusion pay, and may offset payments by the amount an employee receives in other benefit payments.
 - ▶ These obligations do not apply if an employer establishes the employee's exposure was not work-related.
- ▶ Unclear if Cal/OSHA (or state) can enforce this requirement beyond 80 hours required under California and Federal statutes.

Resources available on Cal/OSHA website

- ▶ Cal/OSHA provides a FAQ and a model program that you can edit and use at your dealership.
- ▶ Available at:
<https://www.dir.ca.gov/dosh/coronavirus/ETS.html>

COVID-19 Prevention Emergency Temporary Standards - Fact Sheets, Model Written Program and Other Resources

California recently approved Cal/OSHA emergency temporary standards on COVID-19 infection prevention. These new temporary standards apply to most workers in California not covered by Cal/OSHA's [Aerosol Transmissible Diseases standard](#).

This page contains helpful information and resources specifically related to the new emergency temporary standards for employers and workers.


Emergency Temporary Standards

- [COVID-19 Prevention – Emergency Temporary Standards](#) – *Posted* November 30, 2020

FAQs

- [COVID-19 Emergency Temporary Standards FAQs](#) – *Posted* December 1, 2020
[English](#)

Fact Sheets

- [COVID-19 Emergency Temporary Standards – What Employers Need to Know](#) – *Posted* December 1, 2020
[English](#) 

COVID-19 Model Written Program

- [COVID-19 Model Prevention Program](#) – *Posted* December 1, 2020
(Fillable Word) [English](#)

Other Resources

- [Cal/OSHA Emergency Regulations to Protect Workers from COVID-19 in Effect](#) – *Posted* December 1, 2020
[English](#) | [Español](#)

Part 5
OTHER EMPLOYEE
CONSIDERATIONS



Employee Symptom Screenings

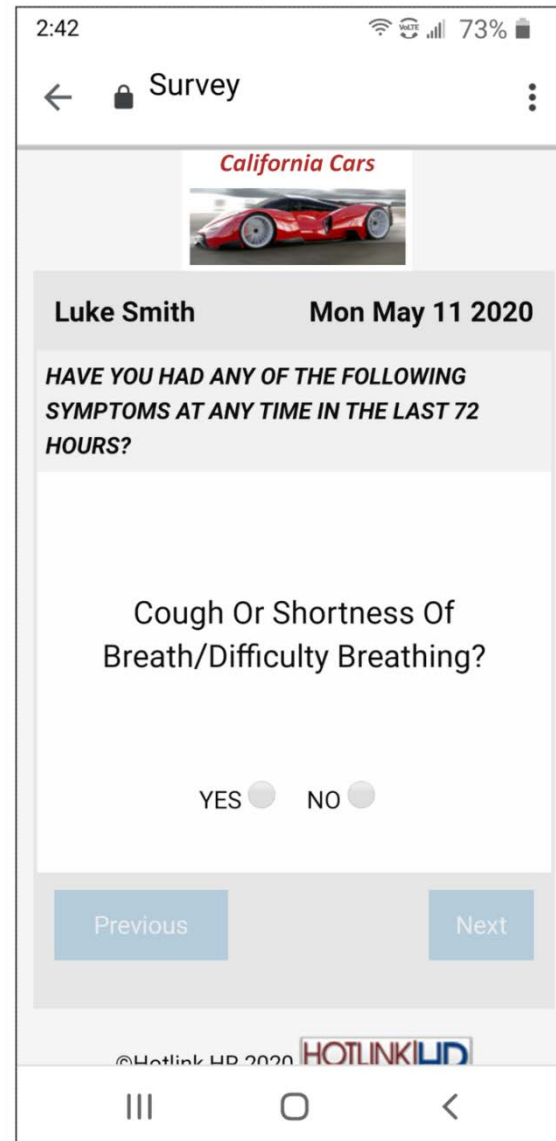
- ▶ Symptom screenings and/or temperature checks required by state guidance.
- ▶ Time must be treated as hours worked for compensation purposes for each day separately.
- ▶ Use a symptom check list
 - ▶ *Sample form available on CNCDA Comply and Fine, Boggs & Perkins LLP*



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 main question is "HAVE YOU HAD ANY OF THE FOLLOWING SYMPTOMS AT ANY TIME IN THE LAST 72 HOURS?". The specific symptom being checked is "Cough Or Shortness Of Breath/Difficulty Breathing?". There are two radio button options: "YES" and "NO". At the bottom, there are "Previous" and "Next" buttons. The footer contains the text "@Hotlink HR 2020" and the "HOTLINK" logo.

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.
- ▶ Since May 2020, the CDC's list of COVID-19 has included:
 - ▶ 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.
 - ▶ Exception: If a health provider concludes the symptoms are not due to COVID-19.
- ▶ 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.

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.



Part 6 REVIEW

Review

- ▶ As compliance gets more complicated, don't forget the basics:
 - ▶ Face coverings are always used properly by employees and customers when required
 - ▶ Social distancing/occupancy restrictions are observed
 - ▶ Employees should perform daily symptom screenings
 - ▶ Strict enforcement of these requirements is key to reducing the spread of COVID-19 and avoiding an enforcement action or shutdown order.
- ▶ Make sure you are properly and immediately reporting COVID-19 cases to Cal/OSHA (in the event of workplace transmission) and your local health department (in the event of an outbreak)
- ▶ Employees that are symptomatic or came in close contact with a person that tested positive should quarantine and may be entitled to paid leave.
 - ▶ Use FFCRA leave if it is available, as you will be reimbursed for providing such leave by the IRS.

Thank you!

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