

# Safe Reopening FAQs for Workers and Employers

## Changes to Emergency Temporary Standards

Following the June 17 vote by the Occupational Safety and Health Standards Board to adopt the [revised](#) COVID-19 Prevention Emergency Temporary Standards, Governor Gavin Newsom signed an [executive order](#) to allow the revisions to immediately take effect on June 17. The revised regulations reflect the state's latest COVID-19 public health guidance. The updates include changes to face coverings and physical distancing requirements. More information on the revised COVID-19 Prevention Emergency Temporary Standards can be found in Cal/OSHA's [Frequently Asked Questions](#).

July 28, 2020

Protecting workers, employers and the public is absolutely critical to safely reopening workplaces.

These FAQs address many workplace-related issues as California proceeds through its [Resilience Roadmap](#).

Employer Obligations to Keep the Workplace and Employees Safe

### **1. Q: What safety and health precautions must my employer provide workers in response to COVID-19?**

A: Cal/OSHA and the California Department of Public Health (CDPH) issued guidance covering 32 industries and produced multilingual, worker-focused safety and health videos to help educate workers. The industry-specific [guidance and resources](#) are a roadmap for employers to use to comply with existing legal obligations to develop and implement a written injury and illness prevention program to identify and eliminate workplace hazards and train employees on how to avoid those hazards, such as COVID-19.

Employers should review the guidance relevant to their worksites in order to develop precautions and preventive measures applicable to businesses in that industry. In accordance with the guidance provided, each employer must implement a plan that is specific to its worksite, identifies all areas and job tasks with potential exposures to COVID-19, and includes control measures to eliminate or reduce such exposures.

### **2. Q: What additional steps must my employer take to protect me and my co-workers if someone working at the worksite tests positive for COVID-19?**

A: If a worker is diagnosed or tests positive for COVID-19, your employer should follow [CDPH Employer Guidelines](#) for addressing a workplace outbreak. Among other things, your employer should:

- Instruct workers to stay home and notify the employer if they are having symptoms of COVID-19, were diagnosed with COVID-19, or are awaiting test results for COVID-19;
- [Report to Cal/OSHA](#) serious injury, illness, and death, including hospitalization and death from COVID-19, even if work-relatedness is uncertain; and
- Consider testing workers in a workplace for identification of additional cases.

Workers may be eligible for workers' compensation, which includes medical treatment, temporary wage-replacement benefits, and, if applicable, benefits for any lasting disability from your work injury or illness

that affects your ability to earn a living. Under [Executive Order N-62-20](#), workers who contracted COVID-19 between March 19, 2020 and July 5, 2020 and worked at the direction of the employer at a worksite other than their homes may be presumptively eligible for workers' compensation benefits. The Division of Workers' Compensation has posted [information](#) on this presumption.

If a worker doesn't qualify for the presumption under the Executive Order, the worker may still be eligible to receive workers' compensation. The worker will need to meet certain threshold requirements, including proving that the injury or illness arose out of employment.

If you would like to file a workers' compensation claim, you may request a claim form from your employer. Additional information for those [who suffered a work-related injury or illness](#) is posted online.

### **3. Q: Must my employer bar workers from coming to the workplace if they appear to have symptoms or say they have been exposed to COVID-19?**

A: Yes. Workers who appear to have symptoms upon arrival at work or who become sick during the day should immediately be separated from other workers, customers and visitors, and sent home.

If a worker is exposed to someone confirmed to have COVID-19 (such as in a household) and reports this information, an employer should recommend that the worker remain home. The employer should also advise the worker to consult with a medical provider and/or local public health department about further actions to take based on individual circumstances. Because these individuals may have had close sustained contact with the COVID-19 positive or diagnosed individual, they may be subject to a formal local quarantine order, based on the health orders implemented in a given county.

[CDPH Employer Guidelines](#) for addressing a workplace outbreak provide additional guidance that employers should follow to control the spread of COVID-19 in the workplace.

If an employer bars a worker from coming to the worksite, the worker may be eligible for paid leave under one of the following laws:

- **Federal paid sick leave up to a possible 80 hours under the Families First Coronavirus Response Act (FFCRA).** This law is enforced by the United States Department of Labor for businesses with less than 500 employees. An employee may be eligible for this leave depending on the size of the employer, among other factors. The United States Department of Labor Wage & Hour Division posted [additional information on FFCRA in its FAQs](#).
- **California COVID-19 Supplemental Paid Sick Leave.** Under [Executive Order N-51-20](#), hiring entities with more than 500 employees must up to provide 80 hours of paid sick leave to food sector workers who work for or through the hiring entity. [Additional information on supplemental paid sick leave](#) is posted on topic-specific FAQs.
- **California Paid Sick Leave under California Labor Code Section 246.** Under California law, employees accrue a minimum one hour for every 30 hours worked, which an employer may cap by a policy at not less than 48 hours of sick leave per year; and may cap use of paid sick leave at a minimum of 3 days or 24 hours of accrued sick leave per year. Employers may also provide policies that allow for greater accrual and use of paid sick leave. Additional information on [California paid sick leave](#) is posted online, as well as [how it applies to COVID-19](#).
- **Local Paid Sick Leave laws.** Certain localities also have paid sick leave laws. If workers are subject to local sick leave ordinances, the employer must comply with both state and local laws, which may differ in some respects. The employer must provide the provision or benefit that is most

generous to the worker. Workers should consult with the relevant local enforcement agency for the locality in which they work for more information.

A side-by-side chart comparing [applicable state and federal laws on paid leave](#) is posted online.

Additionally, depending on the circumstances, the employer may be responsible for compensating the worker for time worked or for reporting to work when the worker works less than half their usual day (“reporting time pay”). [Additional information on reporting time pay](#) is posted online.

#### **4. Q: What can I do if my employer is not implementing guidance to protect workers and the public from getting COVID-19?**

A: Employers in California have a duty to maintain a safe and healthy workplace, including furnishing and using safety devices and safeguards, and adopting practices that are reasonably adequate to make the workplace safe and healthy.

Employers are also required to have a system in place for employees to communicate with their employer about matters of workplace safety and health. If your employer is not implementing guidance to protect you, other workers, and the general public from COVID-19 at the workplace, you may raise concerns through your employer’s pre-designated channels of communication.

If needed, you may also file a complaint with the nearest Cal/OSHA District Office. The California Occupational Safety and Health Act of 1973 gives workers the right to file a complaint about workplace safety and health hazards. The name of any person who submits a complaint to Cal/OSHA must be kept confidential by law, unless the person requests otherwise.

Complaints about a hazard in your workplace can be filed by calling the [Cal/OSHA district office nearest your work site](#), preferably during business hours. If you cannot call during business hours, you may also call during off hours. If you cannot call at all, you may e-mail your complaint to the respective district office.

Whether you choose to raise your concerns directly to your employer or by filing a complaint with the nearest Cal/OSHA District Office, the law prohibits your employer from discriminating or retaliating against you for raising concerns or complaints about safety or health conditions or practices at work for yourself or your co-workers.

#### **5. Q: What should I do if I know I’ve been exposed to COVID-19 at work, but I do not have symptoms yet?**

A: If someone at your worksite has tested positive for, or was diagnosed with, COVID-19, your employer should follow [CDPH Employer Guidelines for addressing a workplace outbreak](#). This guidance also defines who is considered to have had “close contact” with the individual who tested positive for, or was diagnosed with, COVID-19.

If you know you have been in close contact with someone who tested positive for, or was diagnosed with, COVID-19, but do not have symptoms, you should inform your employer and get tested for COVID-19 when possible. All workers must follow state and local public health orders, including isolation and quarantine orders. If you know you have been in close contact with someone who tested positive for, or was diagnosed with, COVID 19, you are most likely subject to a quarantine order requiring you to self-quarantine for a specified period of time.

If your employer requires you to come into work in violation of such orders, you may file [a complaint for retaliation](#).

A summary of benefits for workers impacted by COVID-19 is posted [online](#).

## Face Coverings

### **6. Q: Must my employer require other workers and me to wear face coverings as part of workplace safety and health measures?**

A: Yes. CDPH has issued [guidance](#) that, with limited exceptions, requires individuals to wear face coverings under the following circumstances:

- Inside of any indoor space accessible to members of the public;
- When interacting in person with any member of the public (this excludes coworkers);
- Working in any space visited by members of the public, including, but not limited to, reception areas, service counters, public restrooms, waiting rooms, service areas, and other spaces used to interact with the public, regardless of whether anyone from the public is present at the time;
- Working in any space where food is prepared or packaged for sale or distribution to others;
- Working in or walking through common areas such as hallways, stairways, elevators, and parking facilities;
- In any room or enclosed area when other people are present when unable to physically distance;
- Driving or operating any public transportation or paratransit vehicle, taxi, or private car service or ride-sharing vehicle when passengers are present.
- While outdoors in public spaces when maintaining a physical distance of 6 feet from persons is not feasible.

Complete details, including all requirements and exceptions to these rules, can be found in the [Guidance for the Use of Face Coverings](#). All workers must use face coverings in accordance with these requirements and be trained on their proper use and care.

### **7. Q: Must my employer pay for face coverings for use at my worksite?**

A: California law requires employers to provide, at no cost to workers, safeguards, such as face coverings, when such safeguards are reasonably necessary to render the work and the worksite safe and healthful. Any face covering must cover the nose and mouth effectively. The circumstances under which face coverings must be worn are set out in CDPH's public health guidance discussed above.

The employer cannot charge workers for these face coverings even if the employer permits workers to wear these face coverings during non-work hours away from the workplace. The employer is under no legal obligation to allow workers to use employer-provided face coverings during non-work hours away from the workplace, when the employee is not on, entering or leaving the worksite or employer's premises.

### **8. Q: Must my employer require customers to wear face coverings as part of workplace safety and health measures?**

A: Yes. CDPH [guidance](#) broadly requires the use of face coverings by the public, including customers, in common and public indoor spaces, as well as outdoors when physical distancing is not possible. However,

some customers may not be required to wear a face covering due to specific health risks or due to another exception to the face covering requirements set forth above. **Complete details, including all requirements and limited exceptions to these rules, can be found in the [Guidance for the Use of Face Coverings](#).**

Local public health orders may require employers to take all reasonable steps to prohibit any member of the public who is not wearing a face covering from entering the worksite. Each employer should consult applicable state and local public health orders and develop procedures for how it will enforce face-covering requirements at its worksites.

## Medical Checks

### **9. Q: Must my employer pay me for time spent at my employer’s worksite completing certain medical checks (including temperature checks) before beginning a shift?**

A: Yes. Employers must pay workers for all “hours worked,” including time that a worker is under the control of the employer. Employers that require their workers to complete a medical check in order to begin a shift, even if it is recommended under public health orders, must compensate workers for that time worked.

The term “hours worked” means the time during which a worker is subject to the control of an employer, and includes all the time the worker is suffered or permitted to work, whether or not required to do so. Under this definition, one way to determine whether time a worker spends performing a task is compensable—that is, whether it is time “worked”—is whether the employer exercised control over the worker by requiring the worker to perform that task.

If an employer requires that all workers perform a medical check (such as a temperature check) onsite before beginning a shift, the time completing the medical check, including any time waiting in line, would constitute time worked. This requirement applies even if such tasks were performed pursuant to a state or local public health guideline, because the check is done at the request, and thus under the control, of the employer.

### **10. Q: Is my employer required to pay workers for required medical checks (including temperature checks) at the employer’s worksite, even if the medical checks take very little time?**

A: Yes, an employer is required to compensate for all hours worked in California even if a required task takes only a small amount of time. There is no “de minimis” rule under California law. Therefore, if an employer requires medical checks (such as a temperature check) at the employer’s worksite, the employer must compensate a worker for that time worked, even if the temperature check takes only a small amount of time to complete and record.

### **11. Q: If my employer requires me to perform a medical check (including a temperature check) onsite before the start of a shift and I am sent home after recording a high temperature, is my employer required to pay me reporting time pay?**

A: Generally, yes. Under the law, workers who report to work and are later sent home by the employer, having worked less than half of their regularly scheduled shift, are entitled to be paid for half the usual or scheduled day’s work, but in no event for less than two hours nor more than four hours at their regular rate of pay.

For additional information, the Labor Commissioner has frequently asked questions regarding reporting time pay under normal conditions and during a state of emergency.

An employee may also choose to take California paid sick leave or Supplemental COVID-19 sick leave to supplement the reporting time pay under these circumstances. A side-by-side chart comparing applicable state and federal laws on paid leave is posted online, as are FAQs on laws enforced by the Labor Commissioner and the Governor's Executive Order concerning COVID-19 Supplemental Paid Sick Leave for Food Sector Workers at Companies with 500 or more employees.

**12. Q: Is my employer required to pay workers for reasonable expenses if my employer requires that workers complete a medical check using a particular cell phone application?**

A: Yes, in some cases. If a worker is required to use a personal cell phone as part of a medical check, the employer must pay a reasonable percentage of the cell phone bill to compensate the worker for the portion of time the worker spends on a personal cell phone following the employer's directions. One method that may be used to calculate a reasonable percentage is to determine what portion of the total time a worker spends monthly on a personal cell phone for the medical check required by the employer. Alternatively, an employer may supply the device at no charge to the worker and no reimbursement would be required.

**13. Q: Is my employer required to pay me if my employer requires that I perform medical checks, like a temperature check, at home?**

A: Yes, in some cases. "Hours worked" can include tasks that an employer requires a worker to perform remotely, including tasks that determine whether a worker can or must go to a physical worksite.

Whether time spent at home performing medical checks constitutes hours worked depends on the factual circumstances of each case, including the level of control exercised by the employer. For example, time doing medical checks would likely not be compensable hours worked if an employer simply requested that workers take their temperatures and do a brief wellness check before coming to work so that they could be sure to refrain from coming into work if sick or a risk to co-workers. This generally would not constitute hours worked because the level of control would be slight.

Alternatively, time performing medical checks at home likely would be compensable hours worked if, for example, an employer mandated that workers spend a few minutes before every shift following a set of detailed procedures using a particular cell phone application to take and record their temperature and then fill out a health questionnaire of non-trivial length, and the responsive information is then transmitted to the employer for review. In that case, the employer would be exercising a high degree of control over the manner and timing of the medical checks.

Returning to the Worksite

**14. Q: Can my employer instruct me to return to the worksite even though I have been able to perform my job from home?**

A: Yes, in some cases. California is opening workplaces in phases at a pace designed to protect worker and public health and safety. Under the [State Public Health Officer's May 7 Order](#), businesses that are permitted to open must do so in accordance with [industry-specific guidance and resources](#) that set forth the necessary modifications for each business to protect workers and the public from the risk of COVID-19 at workplaces.

If your worksite is permitted to open and your employer has reviewed the guidance that is relevant to your workplace, made a plan, and put it into action, your employer may require you to return to the workplace, regardless of whether you have been able to perform your job duties at home. Workers are encouraged to speak with their employers about work options that are consistent with public health orders.

**15. Q: What can I do if my employer asks me to return to the worksite, but I live with someone who is in a high-risk category?**

A: CDPH has issued [public health guidance](#) urging individuals who are over 65, immunocompromised, or have certain serious chronic health conditions (such as heart disease, lung disease or diabetes) to stay at home. Whether you can work from home due to living with an individual who is in one of these high-risk categories may depend on the state and local public health orders and guidance in effect at the time your employer instructs you to report to work. Workers are encouraged to speak with their employers about work options that are consistent with public health orders and guidance. Depending on your particular duties, and whether your work can be done at home, such options may include telework or modified schedules.

If you are unable to agree with your employer on an alternative work arrangement, you may have other options. A summary of benefits for workers impacted by COVID-19 is posted [online](#). Also, the [California Family Rights Act](#) requires covered employers to provide their eligible workers with unpaid but job-protected leave to care for a family member with a serious health condition, or when the worker is unable to work because of a serious health condition.

California law protects workers from retaliation when they choose not to work when working would violate a local, state or federal law, or an occupational safety or health standard.

#### Waivers of Liability

**16. Q: Can my employer require workers to sign a form waiving rights under the Labor Code as a condition of returning to work?**

A: No. A document or contract signed by a worker that waives employer liability for violations of minimum basic rights under the Labor Code will likely be found invalid and may result in liability against an employer under Labor Code section 432.6(a). For instance, California employees are entitled to workers' compensation benefits for injuries occurring or illnesses contracted during the course of employment. California employees are also entitled to a safe and healthy workplace. These statutory rights to benefits cannot be waived.

You should consult with an attorney if your employer refuses to let you work unless you sign a waiver for rights to workplace protections or retaliates against you for exercising your rights under California law, including for workers' compensation benefits. If you have been retaliated against for exercising your rights in the workplace, you may file a [retaliation complaint with the Labor Commissioner's Office](#).

December 2020