

WHAT YOU NEED TO KNOW ABOUT CALIFORNIA GOVERNOR'S COVID-19 EMPLOYER PLAYBOOK

Insights
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California Governor Gavin Newsom just released a 32-page [COVID-19 Employer Playbook](#) providing additional guidance for California employers related to COVID-19 and safe re-opening. Though the July 24 Playbook provides a helpful overview for employers regarding steps to take to ensure a safe workplace, like other guidance issued since the start of the pandemic, there are areas that are still unclear and will likely require further guidance. Here are the Playbook highlights you need to know about.

EMPLOYERS MUST HAVE A WORKSITE-SPECIFIC COVID-19 PREVENTION PLAN

One clear message from the Playbook is that all employers must create and implement a tailored COVID-19 prevention plan. Each plan must:

- Be workplace-specific;
- Identify work areas and job tasks with potential COVID-19 exposures;
- Include control measures to eliminate or reduce such exposures, such as symptom screening protocol;
- Maintain healthy business operations, including providing clear direction on, among other things, how to report and communicate with managers, workers, and local health officials when there is a COVID-19 case or outbreak;

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- Maintain a healthy work environment, including cleaning and disinfecting, social distancing protocols, and universal face-covering requirements; specifically, directing employers to look to the CDPH’s [face-covering guidance](#) and [industry-specific guidance and checklists](#);
- Provide effective training for workers, including an outline of policies and procedures for employees and customers to follow; and
- Encourage worker input and dialogue on creating a safe workplace for everyone.

It is critical to look at federal, state, and local guidance when creating a worksite-specific plan, as many local jurisdictions (e.g., cities and counties) have additional industry-specific guidance and requirements. It is also important to stay up to date as information continues to develop and change.

GUIDANCE FOR EMPLOYERS WHEN THERE IS A COVID-19 CASE IN THE WORKPLACE

Another focused point of the Playbook is what employers should do when there is a COVID-19 case in the workplace or an outbreak. The main points covered are as follows:

- Steps employers must take to prepare for COVID-19 outbreaks;
- Communicating identified cases of COVID-19 to the Local Health Department;
- Communicating identified cases of COVID-19 to “close contacts” (sample language to employees is provided);
- Recommendations on preventing the further spread of COVID-19 in the workplace;
- Criteria for returning to work after isolation; and
- Cleaning and disinfecting measures after a confirmed case in the workplace.

The Playbook provides checklists under each topic above. However, what is required of employers versus what is recommended is less clear. As an example, the “Outbreak Identification Preparedness” section states actions employers *must* take to prepare for identification of COVID-

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19 outbreaks in the workplace. However, the same section then states employers *should* ensure that sick leave policies are sufficiently generous and flexible to enable workers who are sick to stay home without penalty. Though there is reference to certain paid sick leave laws, it is unclear what “sufficiently generous” or “flexible” means in this context and if existing paid sick leave laws fulfill this obligation.

Further, the section on “Communication of Identified Cases of COVID-19” includes *considerations* for employers, but notes reporting requirements may vary based on workplace location. Similarly, employers are instructed to communicate identified cases of COVID-19 to the applicable Local Health Department but does not indicate whether this is required for all confirmed cases in the workplace or just when there is an “outbreak.”

Another example lies within the return-to-work criteria for employees with a confirmed case or who were exposed. Again, it is unclear if this guidance is for a single case or only an outbreak. Though some criteria has been updated with the [CDC's recent guidance](#), it is unclear how the CDC's guidance for [Critical Infrastructure Workers](#) who may have been exposed incorporates into this analysis.

REGULATIONS AND GUIDANCE FOR REPORTING COVID-19 CASES

The Playbook includes a section reminding employers that a work-related COVID-19 fatality or illness must be recorded like any other recordable occupational fatality, injury, or illness (specifically, if it is work-related and meets the following criteria outlined [here](#)). There is also guidance on when an employer must report a COVID-19 case to Cal/OSHA (i.e., any serious illness, injury or death of a worker that occurred at work or in connection with work within eight hours of when the employer knew or should have known of the illness).

However, what is not covered in the Playbook is how employers determine if the COVID-19 case was work-related. The Playbook does provide a link to [Cal/OSHA's FAQ's](#) on the Reporting and Recording Requirements for COVID-19 cases. It is important to note that, earlier this year, OSHA also issued guidance on enforcing its [COVID-19 recordkeeping requirements](#).

PAID SICK LEAVE AND OTHER BENEFITS AVAILABLE TO EMPLOYEES

When an employee needs time off for a COVID-19-related reason, there are various potential benefits and protections employers should keep in mind. Below is the list of leave, paid sick leave and other benefits covered in the Playbook:

- California Family Rights Act (and whether COVID-19 qualifies as a serious health condition);
- Paid Sick Leave (federal, state and local paid sick leave entitlements);
- State Disability Insurance and Paid Family Leave;
- Regular and Pandemic Unemployment Benefits; and
- Workers' Compensation

Employers should also keep in mind how many of these entitlements and protections intersect and additional obligations employers have under California's Fair Employment and Housing Act (FEHA).

CALIFORNIA'S ENFORCEMENT AND COMPLIANCE EFFORTS

The Playbook provides helpful insight into the composition of California's COVID-19 Task Force, which has been created to monitor and enforce violation of California's statutes and orders. There is a list of state agencies included in the task force, such as the Alcoholic Beverage Control Department (ABC), Department of Consumer Affairs (DCA), Department of Industrial Relations (DIR), and others. Employers are encouraged to reach out to the offices listed in Appendix B of the Playbook to seek assistance or answers to questions pertaining to the COVID-19 statutes and orders.

Employers are also encouraged to email essentialservicesinquiries@cdph.ca.gov if they have questions about whether a specific workplace activity is allowed.

TRAINING AND EDUCATING EMPLOYEES TO PREVENT THE SPREAD OF COVID-19

The Playbook emphasizes the importance of training and educating employees on COVID-19 and the steps they can take to protect themselves and others both at work and outside of work.

GUIDANCE FOR ENFORCING FACE MASK REQUIREMENTS

The Playbook provides the following tips when dealing with individuals who are not wearing face coverings:

- Employees should avoid confronting other workers or members of the public not wearing a face covering, maintain at least a six-foot distance from the individual, and report such incidences to a supervisor;
- Supervisors should consult human resources for guidance in dealing with these situations;
- Employers should train employees on how to handle situations when someone is not wearing a face covering, keeping in mind that an interactive dialogue may be required to assess if there are accommodations that can be made while maintaining a safe environment; and
- Use de-escalation efforts to enforce the face mask requirements.

The Playbook offers some sample language to consider using in dealing with these situations. You can also check out our [5-Step Action Plan](#) for employers dealing with anti-mask guests.

KEY TAKEAWAYS FOR EMPLOYERS

- Continue to stay up to date on evolving federal, state, and local guidance;
- Create and implement a written workplace-specific plan, incorporating applicable federal, state, and local guidance in creating the plan;
- Train all employees on new policies and procedures, including how to report possible exposure, COVID-19 symptoms, a confirmed COVID-19 case, non-compliance with protocols, etc.;
- Have a clear plan of action for addressing a confirmed COVID-19 case in the workplace;
- Be aware of and comply with recording and reporting obligations; and

- Provide appropriate notice to employees of available benefits and leave entitlement and remain conscious of the various laws, regulations, and requirements impacting COVID-19-related issues in the workplace.

CONCLUSION

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any attorney in our [California](#) offices, or any member of [our Post-Pandemic Strategy Group Roster](#). You can also review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.