



Sacramento County Permits Some Businesses To Return And Enacts New COVID-19 Worker Protections

Insights

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The Sacramento County Health Officer just issued an Order superseding the County's previous Stay-At-Home Order, reflecting the County's shift from the Widespread Tier (Purple) to the Substantial Tier (Red) on the state's Blueprint for a Safer Economy tiered reopening plan. The September 29 Order also permits certain businesses to begin indoor operations with limited capacity.

This comes on the heels of the Board of Supervisors passing the Sacramento County Worker Protection, Health, and Safety Act of 2020 (WPHSA). Under the Act, signed on September 1, all employers that operate a business location in Sacramento County are required to implement certain social distancing, COVID-19 mitigation, and cleaning practices. Additionally, all large employers who operate businesses in Sacramento County are required to provide certain employees with up to 80 hours of supplemental paid sick leave for specified reasons related to COVID-19.

County Health Order

The updated Public Health Order took effect on September 29, 2020. The Order allows for some business to resume indoor operations in a limited capacity and allows previously prohibited outdoor businesses to resume operations.

Outdoor Operations Permitted

Per the Order, outdoor operations are permitted for the following businesses as long as social distancing, face coverings, and sanitation measures are implemented:

- Cardrooms and satellite wagering;
- Family Entertainment Centers, including bowling alleys, miniature golf, batting cages, kart racing, and arcades; and

Bars and breweries can remain open with outdoor operations as long as they offer sit-down, outdoor dining.

Indoor Operations Permitted

Indoor operations are permitted for the following businesses as long as social distancing, face coverings, and sanitation measures are implemented:

- Retail at maximum 50% capacity;

- Critical infrastructure as defined by the State Public Health Officer;
- Gyms and fitness centers at maximum 10% capacity;
- Hair salons and barbershops;
- Movie theaters at maximum 25% capacity or 100 people, whichever is fewer;
- Museums, zoos, aquariums at maximum 25% capacity;
- Nail salons and physician-ordered electrolysis operations;
- Personal care services, including body waxing and estheticians;
- Places of worship at maximum 25% capacity or 100 people, whichever is fewer;
- Professional sports without live audiences;
- Restaurants at maximum 25% capacity or 100 people, whichever is fewer; and
- Shopping centers, including malls but excluding food courts and common areas at maximum 50% capacity.

Masks Are Required

The Order aligns with the state mandate requiring individuals to wear face coverings whenever indoors, with certain exceptions, and whenever outdoors and unable to maintain physical distance of six feet from non-household members.

Sacramento County Worker Protection, Health, and Safety Act

Employers located in the City of Sacramento will be familiar with the Sacramento County Worker Protection, Health, and Safety Act (WPHSA) because it is an almost exact replica of the City of Sacramento's Act by the same name that was enacted by the City Council earlier this year.

Who Is Covered?

The Act defines a covered employer as any individual or entity that operates a business in Sacramento County and that directly employs, indirectly employs, or exercises control over the wages, hours, or working conditions of any covered employee. The Act defines a covered employee as any individual that works within Sacramento County for a covered employer and who would be considered an employee pursuant to California law.

When Does The WPHSA Take Effect?

The WPHSA is technically effective from October 1, 2020 through December 31, 2020. However, employers have some time to implement the Act because the obligations that it imposes on them do not take effect until October 15, 2020. Importantly, employees will retain the ability to file a civil action against employers for violations that occurred while the WPHSA was in effect even after it ceases to be effective.

Required Safety Practices And Protocols

The WPHSA requires employers to implement all of the following safety protocols at all of their business locations within Sacramento County:

1. Daily cleaning and disinfecting of high touch areas in accordance with the guidelines issued by the Centers for Disease Control and Prevention (CDC);
2. Maintaining cleaning protocols established by the employer for all other areas of the employment site;
3. Establishing protocols for action upon discovery that the employment site has been exposed to a person who has a probable or confirmed case of COVID-19;
4. Providing employees access to regular handwashing with soap, hand sanitizer, and disinfectant wipes;
5. Cleaning of common areas – including break rooms, locker rooms, dining rooms, restrooms, conference rooms, and training rooms – daily and in-between shifts;
6. Providing face coverings for employees to wear while at the employment site, and mandating their wear while on the site except to the extent an employee can maintain physical distance of at least six feet from other persons or is using break time to eat or drink, in accordance with guidance from the CDC. Additionally, employers must establish protocols specifically designed to ensure proper physical distancing; AND
7. Informing all employees of the above safety protocols in writing, both in English and in any language spoken by at least 10% of the employees at any employment site.

However, an employer will not be found to have violated safety protocols at a worksite that it does not own, maintain, lease, or control if it has taken steps to contact the entity that controls that worksite and encouraged that entity to comply with the required safety protocols.

Supplemental Paid Sick Leave

In addition to complying with the safety protocols outlined in the Act, employers who have over 500 employees nationally are required to provide all employees that work within Sacramento County, other than health care providers or emergency responders, with Supplemental Paid Sick Leave (SPSL). The SPSL provided must be in addition to any previously existing paid sick leave, paid time off, paid vacation time that the employer provided, or is required to provide by statute, written employment policy, or collective bargaining agreement.

Amount of Supplemental Paid Sick Leave

Under the Act, full time employees are entitled to 80 hours of SPSL and part time employees are entitled to the number of hours that the employee worked on average over a two-week period. To calculate this average, the employer must take the average number of weekly hours worked by the employee during the six months immediately preceding October 1, 2020 and multiply that number by two.

Despite that requirement, if an employer has granted an employee paid sick leave, paid time off, or paid vacation time specifically for COVID-19 related matters since March 19, 2020, above and beyond what was required to provide by statute, written employment policy, or collective bargaining agreement, the employer may use those hours to offset any SPSL required by the Act. Additionally, if the employee was entitled to leave pursuant to the Governor's Executive Order N-51-20, the employer can credit those hours as an offset against any required SPSL.

Permissible Uses of Leave

An employee that is unable to work or telework may use SPSL for any of the following reasons:

1. The employee is subject to quarantine or isolation by federal, state, or local order due to COVID-19, or is caring for a family member who is quarantined or isolated due to COVID-19;
2. The employee is advised by a health care provider to self-quarantine due to COVID-19 or is caring for a family member who is so advised by a health-care provider;
3. The employee chooses to take off work because the employee is over the age of 65 years or is considered vulnerable due to a compromised immune system;
4. The employee is off work because the employer temporarily ceases operation due to a public health order or other public official's recommendation;
5. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis; OR
6. The employee is caring for a minor child because a school or daycare is closed due to COVID-19.

Employees requesting SPSL can be required to provide the reason for the leave, however, they cannot be required to provide a doctor's note or any other form of documentation justifying their need for SPSL. Employers may also require employees to follow reasonable notice procedures before approving any request for SPSL, provided that their need for SPSL is foreseeable.

Employers may not require employees to use other accrued paid sick leave, paid time off, or vacation time before using SPSL. Additionally, employers may not require employees to find replacement workers as a condition of using SPSL. Finally, employers may not issue any discipline points or attendance points under a no-fault attendance policy in response to employees' use of SPSL. Unused SPSL expires when the WPHSA ceases to be effective and cannot be cashed out by employees.

Rate of Pay During Leave

Employees must be paid at their regular rate of pay, up to a maximum amount of \$511 per day and a maximum aggregate amount of \$5,110 for the entire benefit. However, employees who use SPSL to care for a family member must only be paid 2/3 of their regular rate of pay, up to a maximum amount of \$200 per day and a maximum aggregate amount of \$2,000 for the entire benefit.

Right To Refuse To Work Without Pay

The WPHSA allows covered employees to refuse to work *without pay* if they reasonably believe that their employer has not complied with the WPHSA's safety protocols and have provided their

employer with notice of the alleged violation. However, an employee's right to refuse to work without pay ends when:

1. The employee no longer has a reasonable belief that the employer has not complied with the WPHSA's safety protocols; OR
2. The County of Sacramento investigates the employee's allegations and determines that the employer has fully complied with the WPHSA's safety protocols; OR
3. The employer provides proof to the County that it has cured any violations of the WPHSA's safety protocols that the County has substantiated.

Retaliation

The WPHSA prohibits employers from retaliating against employees for attempting to exercise any of their rights under the Act.

Obligation To Certify Compliance

Any employer who receives financial assistance from Sacramento County through a program designed to provide assistance to businesses affected by COVID-19 is required to certify to the County that it has complied with the WPHSA as a condition of receiving any future funds.

Remedies For Violations

Prior to taking legal action against an employer for any violations of the WPHSA, an employee must first provide it with written notice of the specific provisions of the WPHSA that have been violated and all facts supporting the existence of those violations. Additionally, the employee must provide the employer with 15 days following its receipt of that written notice to cure all alleged violations. Where an employer fails to timely cure all violations alleged by an employee, the employee will be permitted to file a civil action against the employer for damages, equitable relief, and attorneys' fees and costs.

In addition to any action filed against an employer by an employee, the County itself may file a civil action against an employer for statutory penalties and reimbursement of any monies previously received by the employer through any program designed to provide assistance to businesses affected by COVID-19.

Dueling Supplemental Sick Leave Regulations

In addition to the WPHSA, the California Legislature recently passed AB 1867 which provided COVID-19 Supplemental Paid Sick Leave to many of the same employees entitled to leave under the City and County Acts. Employers should be cautious when implementing local sick leave and the Supplemental Paid Sick Leave provided by AB 1867 as significant portions of the laws vary. Which employees qualify for the leave, why they qualify for leave, and the calculation of leave available varies between the local and state-wide laws.

Conclusion

Sacramento employers should ensure that they are up to speed on the new local Public Health Order and local Worker Protection, Health, and Safety Acts to ensure compliance with these regulations. It is not enough to only implement sick leave required by state-wide legislation. Doing so can expose employers to potential liability for failing to comply with local ordinances that are more lenient and expansive than their state-wide counterparts.

We 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 COVID-19 Taskforce](#). You can also review our nationwide [Comprehensive and Updated FAQs for Employers on the COVID-19 Coronavirus](#) and our [FP Resource Center for Employers](#), maintained by our Taskforce.

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

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