

California: Labor & Employment Alert

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California DFEH Guidance Regarding COVID-19

On March 20, 2020, the California Department of Fair Employment and Housing (DFEH) issued a bulletin explaining its interpretation of how the California Paid Sick Leave law (PSL), the California Family Rights Act (CFRA), and the California Fair Employment and Housing Act (FEHA) apply to the current COVID-19 pandemic. A copy of the DFEH bulletin is attached [here](#).

The bulletin reminds employers that, first and foremost, Governor Newsom has declared a state of emergency in California and they must comply with public health orders issued by federal, state, and local authorities.

Dealing With Employees Who Display COVID-19 Symptoms.

The DFEH goes on to note that current guidance from the Centers for Disease Control and Prevention states that employees who become ill with COVID-19 symptoms should leave the workplace, such that it is appropriate for employers to ask employees who exhibit COVID-19 symptoms to go home. However, employers must provide eligible employees with paid sick leave under the PSL or their own paid sick leave policies, if more generous. Under the PSL, after 30 days of employment, most California employees not covered under a qualifying collective bargaining agreement that dictates otherwise begin to accrue one hour of paid sick leave for every 30 hours worked and may use at least 24 hours of paid sick leave per year. Employees may also be entitled to other paid leave, including accrued vacation or under the soon-to-be-effective federal Families First Coronavirus Response Act (see Messner Reeves' Guidance regarding that law [here](#)), or job-protected unpaid leave, including under the CFRA. According to the DFEH bulletin, employers may also safely inquire whether employees are experiencing COVID-19 symptoms and whether employee absences are due to illness. However, employers must maintain all information about employee illness as confidential medical records.

Job-Protected Leave Under The CFRA.

Employees who have worked for at least one year, and for at least 1250 hours in the preceding year, for an employer with at least 50 employees within 75 miles of the employee's worksite are entitled to up to 12 weeks of job-protected leave under the CFRA to address their own serious health condition or to care for a spouse, parent, or dependent child with a serious health condition. The DFEH notes that COVID-19 will qualify as a serious health condition in circumstances where it results in inpatient care or continuing treatment or supervision by a health care provider, or if it leads to certain qualifying medical conditions, such as pneumonia. Under the CFRA, employees are required to provide notice as soon as practicable of the need for a qualifying leave and employers may require medical certification of the qualifying health condition, but the DFEH urges leniency with respect to these requirements under the circumstances of the COVID-19 pandemic.

Reasonable Accommodation Under The FEHA.

The greatest source of uncertainty – and, therefore, potential conflict – is the degree to which employees who are ineligible for, or have exhausted, leave under other laws may nevertheless be entitled to leave as a form of accommodation. Unless doing so would impose an undue health risk, safety risk, or hardship, the FEHA requires all employers of five or more employees to provide reasonable accommodation to disabled employees. Whether illness or symptoms related to COVID-19 rise to the level of a disability under the FEHA will be a case-specific determination. However, if they do, under existing case law precedent, a finite leave of absence may be a reasonable accommodation, even where the employee is not otherwise entitled to any leave. Of course, other, lesser accommodations – such as telework – may satisfy an employer’s accommodation obligations. Whatever the situation, employers have an independent obligation to interact in good faith with employees who request an accommodation for a disability. While employers are entitled to request reasonable medical documentation confirming the disability and the need for accommodation, the DFEH recommends leniency with respect to any such requirement under the current circumstances.

Notably, the DFEH’s bulletin addresses only the rights and responsibilities of employees and employers under the PSL, the CFRA, and the FEHA. Employees may be entitled to other benefits, and employers may have other obligations, under workers’ compensation laws (if employees are unable to do their usual job because they were exposed to COVID-19 during the regular course of their work), unemployment insurance (if employees lost their job or had their hours reduced for reasons related to COVID-19), or disability insurance (if employees are unable to work due to medical quarantine or illness related to COVID-19).

Please do not hesitate to contact Messner Reeves attorney Charles Cavanagh if you have further questions or would like assistance complying with these laws.