

## **Coronavirus (COVID-19) - Employer's Frequently Asked Questions**

The Department of Industrial Relations ("DIR"), California's umbrella enforcement agency for employment related laws, recently issued a set of frequently asked questions ("FAQ") to guide employers navigating the fallout of Coronavirus ("COVID-19"). Here is a summary of the DIR's guidance:

### **1. Can an employee use California Paid Sick Leave ("PSL") when dealing with COVID-19 related illness?**

Yes, so long as the employee has available PSL.

Recall, employees can use PSL for absences due to illness, to diagnose an illness, to treat an existing health condition, or to seek preventative care, both for the employee personally and for the employee's qualifying family member.

The DIR takes the position that preventative care can include self-quarantine as the result of potential exposure to COVID-19 where self-quarantine is recommended by civil authorities, or where an employee may have been exposed to COVID-19, for example by traveling to a "high-risk" area.

### **2. If an employee has exhausted all available PSL, is other leave available?**

Yes. For example, some employers may voluntarily provide vacation or other paid time off ("PTO"). Employers should abide by their existing policies in granting voluntary leave requests. Businesses should also keep in mind other leave laws, such as leave available under Family and Medical Leave Act ("FMLA") and California's Family Rights Act ("CFRA") when dealing with COVID-19 related issues in the workplace.

### **3. Can an employer require a worker who is quarantined to exhaust paid sick leave?**

According to the DIR – no.

But an employer can require an employee to utilize a minimum of two hours of PSL if the employee chooses to utilize PSL for a quarantined-related absence.

### **4. Can employer require a worker to provide information about recent travel to countries considered to be high-risk for exposure to COVID-19?**

The DIR takes the position that an employer can ask employees for such information, so long as the employer requests only that the employee notify the employer that they are traveling to or have traveled to a country considered at "high-risk" to COVID-19 by the Center for Disease Control ("CDC"). For information on the CDC's list of "high-risk" countries, visit the CDC's website at: <https://wwwnc.cdc.gov/travel/notices>.

**5. Do I need to pay an employee who reports to work and is sent home because of a COVID-19 related matter?**

Yes. Employers should follow general reporting-time pay rules when addressing this circumstance.

**6. If an employee is exempt, can I prorate the employee's weekly salary based on the employee performing less than a full weeks' worth of work?**

No. Federal law requires that an employer pay an exempt employee their full-weeks' salary even if the employee works less than the full week as the result of the employer's failure to make work available. However, an employer may reduce an exempt employee's salary where the employee performed no work during the week.

Read the DIR's entire FAQ section here: <https://www.dir.ca.gov/dlse/2019-Novel-Coronavirus.htm>.

Based on the DIR's guidance, employers should take affirmative steps to ensure their workplace is adequately prepared to deal with the fallout of COVID-19. Some actions to consider include:

- Stay updated as to areas locally, nationally, and abroad considered by the CDC to be at high-risk to COVID-19;
- Work proactively with employees to maintain a low level of exposure to COVID-19;
- Stay up to date on leave related laws, including California PSL, FMLA, and the CFRA;
- Stay up to date on California's reporting time pay laws
- Stay mindful and knowledgeable about employees' privacy rights in the workplace;
- Consider potential policies to ensure information voluntarily shared by employees with the employer remains confidential.