

## CORONAVIRUS-COVID-19: CA clients

Dear Clients,

We don't have to tell you what an unusual and concerning time we are living in right now. We all are trying to figure out what to do, when to do it, and how best to take care of our employees while keeping the business in the black for the benefit of everyone. The information is changing so rapidly and there is so much media attention on the subject that we have hesitated to weigh in until now. But after speaking with one of our attorneys, there is information that we can give you to try to clarify what your options are as well as some of your responsibilities from a compliance standpoint. *Please don't hesitate to call or email us with case-specific questions or comments.*

If you would like a copy of the sample EMPLOYEE COMMUNICATION that we have written for this coronavirus situation, please send us an email. It can be customized to fit your unique benefits, pay and work plans and company values.

### **One of the biggest concerns is about pay.**

There are some basic rules about pay that apply to all businesses:

- **Nonexempt** employees are not required to be paid if they are not working. If you have hourly employees, they are nonexempt.
- **Exempt** employees have to be paid if they do any work during the workweek.
  - If exempt employees can work from home, that is best. If that is the case, then they should receive their full salary as usual, and it is not based on the number of hours they work.
  - You can substitute vacation or paid sick leave (if they are sick) for part of their pay as long as they have these benefits in their bank.
- If **exempt** employees run out of paid sick leave/vacation/PTO, then you have to pay them for the days they do any work. unless you can do the following:
  - Limit the days they work by telling them in writing that they can only work on 3 days/week and the other two days they may not do any work and they have to use those days as "personal days" meaning that they won't be paid because they are not allowed to work.
  - Treat the time like a furlough with exempt employees working one full week and not working the next full week.

**Q: Do I have to pay employees if I send them home?**

**A:** If you send them home, the above rules apply but under these circumstances our attorney believes you can't require them to use vacation or PTO but you can allow it if they wish to use it.

**Q: Do I have to pay them if they want to stay home?**

**A:** The above rules apply.

**Q:** Can I require that they use their vacation, Paid Sick Leave or PTO if they want to stay home or I send them home?

**A:** If they are working, then they are paid their wages. If part or all of the time they are home they can't work, then you can give them the option of being unpaid or using their vacation or PTO. If they are sick, then you can automatically use their Paid Sick Leave.

**Q:** I can't afford to keep paying my employees when I have to shut the doors to the business. What resources can I offer my employees for wage replacement?

**A:** There are three options offered by the Employment Development Department (EDD). Please go to the following link to read about each of the options listed below: [www.edd.ca.gov](http://www.edd.ca.gov)

1. If your employee becomes ill with any illness, they may be able to collect **State Disability Insurance (SDI)**.
2. If your employee has to take care of family members who are sick, then they can apply for **Paid Family Leave**.
3. Because your employees can't come to work through no fault of their own, they may be able to collect under the **Disaster Unemployment Insurance** program.

**Q:** My employees have vacation or PTO in their banks but they are afraid they will run out. Are there any ways they can maximize these benefits?

**A:** You can "integrate" the benefits from the above programs with whatever they have in their banks. You can find out their benefit amount and then put whatever number of hours of those accrued benefits on top of their EDD benefit. Example: if they earn \$1000/week and their SDI benefit is \$600, you can pay them the number of hours they request to increase their income up to \$1000. This will make their accrued benefits go farther.

**Q:** Are there any other ways to keep people working but not at the rate they were before?

**A:** Here are some additional options:

- **Job sharing**—if you have more than one person in a particular position, perhaps you can alternate working or split the hours between the two or more employees. That allows the job to get done but for fewer hours for everyone. Hopefully you can retain your employees until they can go back to work full-time and also get some of the work done in the process. This is a program that is also offered by the EDD: [https://www.edd.ca.gov/unemployment/Work\\_Sharing\\_Program.htm](https://www.edd.ca.gov/unemployment/Work_Sharing_Program.htm)
- **Reduced hours**—you can create a schedule where all employees, or employees in a certain department work fewer hours. Obviously you have to offer it equally to everyone in a department or in the entire company. The EDD offers a program about this as well. Please follow this link: [https://www.edd.ca.gov/disability/Part-time\\_Intermittent\\_Reduced\\_Work\\_Schedule.htm](https://www.edd.ca.gov/disability/Part-time_Intermittent_Reduced_Work_Schedule.htm)

**Q:** I don't have any jobs that can be done from home. If I send everyone home, I will lose all my employees.

**A:** That is a legitimate fear for a number of businesses and we empathize. If you can't put any of the programs into place that are discussed above, we have these suggestions:

- The programs listed above are available to employed people (SDI and Paid Family Leave). Disaster Unemployment is so new that we are not certain how it works yet. But you can encourage your employees to take advantage of those programs and if you have the resources, you can offer a **"Stay Bonus"** to employees who return when it becomes possible to do so. A "Stay Bonus" is a bonus that is paid when someone agrees to stay employed for a period of time or agrees to come back to work when requested. The amount of the "Stay Bonus" would depend on what you can afford and what would be motivating to your employees.
- If your employees have to quit, under these circumstances they may be eligible for **Unemployment Insurance**. We do not currently know how the EDD is handling voluntary quit situations that occur because of the coronavirus.

**Here are some of the other questions we are getting along with the answers:**

**Q: What are other businesses doing?**

**A:** It depends on several factors, namely, the type of business you are and the public traffic you have, the city requirements in your area, and the ability of your employees to work remotely.

**Q: If I have employees who are sick but say they have allergies and want to work, am I obligated to send them home?**

**A:** The phrase we are hearing most often is decisions are being made “with an abundance of caution.” At this point it is better to send them home than create fear among your other employees.

**Q: If I can stay open but don't need to have all my employees work, can I put some of them on furlough?**

**A:** Yes. Contact us for sample communication and calendar ideas.

Sincerely,

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