

COVID-19 Update From EKA – March 23, 2020

EKA continues to monitor local, state and federal lawmakers efforts to soften the economic blow as the COVID-19 pandemic spreads. Below are some of the significant government-related developments over the weekend and information to assist you navigate the restrictions and guidelines put in place by local, state and federal agencies to combat the COVID-19 pandemic. As a reminder, EKA's media, government, public relations and crisis support services are fully operational and we are here to assist you. We are not a law firm and the information contained in this update should not be considered legal advice.

Real-Time COVID-19 Information

The Homeland Security Advisory Council at Pepperdine University's School of Public Policy (HSAC@SPP) have created interactive maps which contain information on:

- City of Los Angeles Temporary Shelter Beds
- City of Los Angeles Handwashing Stations
- LAUSD Grab and Go Food Centers
- SMMUSD Grab and Go Food Centers
- Orange County School Districts Grab and Go Food Centers
- Older Adults Nutrition Program locations
- Confirmed COVID-19 cases in every county in California
- Confirmed COVID-19 cases in the United States and globally

To view the Spanish Map, click [here](#). To view the English Map, click [here](#).

Stay At Home Orders – Social Distancing

Grocery Stores, Restaurants, Pharmacies & Other Essential Businesses Must Enforce Social Distancing

The Los Angeles County Department of Public Health (Public Health) issued [a new Public Order](#) on Saturday, March 21, 2020, that includes new rules for how businesses are to enforce social distancing. For Essential Businesses not prohibited from operating (grocery stores, pharmacies, restaurants that offer carry-out or delivery, etc.), the owner or manager of the business must:

- Enforce social distancing measures by requiring members of the public to be separated by at least six (6) feet from others, to the extent feasible. Persons who are family members or household contacts, may stand or move together, but must be separated from others by a distance of at least six (6) feet.
- Provide access to hand washing facilities with soap and water or to hand sanitizer that contains at least 60 percent alcohol.
- Post a sign in a conspicuous place at all public entries that instructs members of the public to not enter if they are experiencing symptoms of respiratory illness, including fever or cough.
- Adhere to communicable disease control recommendations provided by the Public Health, including guidance for cleaning and disinfecting the site. See guidance [posted on the Public Health webpage](#). The Full Order can be found [here](#).

Essential Services

Gov. Gavin Newsom's office released an [updated the list of essential services](#) under the statewide stay at home Executive Order. The governor's Order is similar in broad strokes to shelter-in-place restrictions unveiled by other municipalities around the state. Newsom's Order declares that employees working in specific critical infrastructure sectors from energy to food and agriculture to financial services "may continue their work" — raising questions about what happens if local officials tell businesses in those industries to shut down, as the county rules require them to do in some cases. Legal experts believe that local rules that are stricter than the governor's Order are still in place. The general rule is that the governor's Order is going to supersede any inconsistent or conflicting local regulation and the more restrictive consistent regulation is the rule/law that will apply.

One point of confusion is that the governor's office made a small change to the executive Order after it was first released. When the Order was made public last night, it declared that residents should stay home "except as needed to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at" [a page on the website](#) of the federal Cybersecurity and Infrastructure Security Agency. That page contains broad descriptions of 16 "critical infrastructure sectors," from defense industrial to commercial facilities to food and agriculture, which some local officials took to mean that any businesses falling into the categories would be allowed to operate. The version of Newsom's Order posted on the state website linked to [a different page](#) on CISA's site, titled "Identifying Critical Infrastructure During COVID-19." That page includes [a memo](#) from the federal agency's director released Thursday — which is also cited in Newsom's Order — with a much narrower list of specific types of businesses that the feds recommend be considered essential in each sector during the pandemic.

County of Los Angeles

Intensive care beds at Los Angeles County's emergency-room hospitals are already at or near capacity, even as those facilities have doubled the number available for COVID-19 patients in recent days, according to newly released data

The Los Angeles Superior Court's Sylmar courthouse, which handles juvenile cases in two courtrooms, was ordered shut down for three days Sunday after a public defender assigned to the courthouse tested positive for COVID-19.

Inglewood's \$5 billion SoFi Stadium, which was expected to open in the fall, will have all construction be stopped as construction workers are not considered 'essential-services' employees. This puts large events, such as concerts, NFL games, and the upcoming Super Bowl in jeopardy, as well as possible delays to the 2028 Olympics for stadium readiness. Combined, that will cost Inglewood, Los Angeles, and Los Angeles County combined hundreds of millions at even the most conservative estimate, perhaps even over a billion. The stadium is currently about 90% done and planned a grand opening on July 25th with a Taylor Swift concert. Perhaps most devastating is the possible loss of Super Bowl LVI in 2022. As league rules specify that a stadium has to be in operation for one year before hosting the game, Los Angeles may miss out

on one of the world's largest events. The Super Bowl was expected to bring in \$100 million to the region.

All parks, trails and facilities owned by the Santa Monica Mountains Conservancy are now closed to the public until further notice in response to the novel coronavirus outbreak. A list of the most popular MRCA parks can be found [here](#).

City of Los Angeles

Los Angeles City Council at its meeting tomorrow is expected to take up a number of measures setting restrictions on businesses and their ability to fire their employees in light of the coronavirus crisis. Council members Mike Bonin, Marqueece Harris-Dawson, Paul Koretz and separately, Gil Cedillo have introduced motions to protect employees. The actual language still must be drafted. The proposals, which are retroactive to March 1st would mandate that:

- Businesses to lay off employees based on seniority.
- If a business survives the recession, employees will have the right of recall based on seniority.
- If a business is sold, the laid off employees will have the right of retention.
- Additionally, businesses will need to have 'just cause' to terminate an employee

The Los Angeles Department of Building & Safety has created COVID-19 guidelines for contractors, construction supervisors, developers, job managers, homeowners and anyone else responsible for an onsite inspection. To view the guidelines, [click here](#).

A proposal to freeze rent and LADWP utility increases during the coronavirus public health emergency will be put forth during next week's Los Angeles City Council meeting. The motion, which would make the rent and utility freezes retroactive to Los Angeles Mayor Eric Garcetti's first COVID-19 related order. The motion would ask L.A. City staff to implement the following:

- Freeze on all residential and commercial rent increases and call on the State government to lift any legal barriers.
- The DWP would be instructed in the motion to develop a program that restricts utility bills over and above the average water and electric charges paid during the previous year.
- A moratorium would also be placed on penalties, late fees and other costs due to non-payment. Customers would have up to 12 months following the end of the emergency declaration to pay any unpaid bills, according to the proposal.

Mayor Garcetti said the City is closing beaches and nearby parking lots at Venice Beach and sports and recreation at parks, including public golf courses. The Mayor wants to raise \$25 million to provide childcare for health care workers, grants for families and individuals who need assistance now and meals for seniors.

St. Vincent Medical Center closed in January, but California is readying the facility to begin providing care for up to 366 COVID-19 patients as soon as possible. The Navy hospital ship, Mercy, will soon be coming to dock at the Los Angeles port.

City of Long Beach

The WorkPlace job center (4811 Airport Plaza Dr., Ste. 120) will remain open to assist Long Beach families, workers and small businesses affected by the COVID-19 outbreak. The job center is assisting Long Beach residents file for unemployment, and other protections and services. Managed by the [Pacific Gateway Workforce Innovation Network](#), The WorkPlace Job Center provides services to workers seeking information about job openings, vocational training, unemployment insurance benefits and additional workforce opportunities in Long Beach, Signal Hill and the Los Angeles Harbor communities. Services at The WorkPlace include:

- Job search assistance with connections to employers who are hiring.
- Career counseling and vocational training to help individuals make long-term plans and connect to growing sectors of the economy.
- Information about special state, county and city programs for workers who face potential layoffs and downsizing.

In accordance with the state's "Stay at Home" order and the City's local "[Safer at Home](#)" order, the Long Beach closed all sports facilities in Long Beach parks and beaches and is asking the community to not gather in open spaces throughout the City.

Culver City

The City [issued a Public Order](#) that landlords may not evict a residential tenant if the tenant is able to show inability to pay Rent due to circumstances related to the COVID-19 pandemic. On March 20, 2020 the City [issued additional rules](#) with details about the residential eviction moratorium. Evidence of the inability to pay rent due to COVID-19 include one or more of the following:

- Loss of income due to a COVID-19 related workplace closure;
- Childcare expenditures due to school closures;
- Health care expenses related to being ill with COVID-19;
- Expenses or loss of income due to caring for a member of a tenant's household who is ill with COVID-19; or
- Reasonable expenditures that stem from government-ordered emergency measures.

The City is looking for volunteers to help the City assist those in need (including older adults). They are asking people to [email the City](#) or call the City's Coronavirus Hotline at (310) 253-6890.

Sacramento

The California Department of Alcoholic Beverage Control (ABC) is providing additional guidance to the alcoholic beverage industry as the State continues to respond to the COVID 19 emergency. In addition to the recently posted [Notice of Regulatory Relief](#) on ABC's website, the department has also provided a list of Frequently Asked Questions [FAQ's](#).

California State Parks have temporarily closed all campgrounds in the state park system to support efforts to help slow the spread of COVID-19.

President Trump approved a request Gov. Gavin of a Major Disaster Declaration to assist in California's COVID-19 preparedness and emergency response efforts. The Major Disaster Declaration includes any and all individual assistance programs to assist those affected by the outbreak and lessen the economic impacts of the crisis. It will provide additional assistance, including but not limited to, mass care and emergency assistance, crisis counseling, disaster case management, disaster unemployment assistance, disaster legal services and Disaster Supplemental Nutrition Assistance. The Governor's request for a Presidential Major Disaster Declaration for the state's COVID-19 preparedness and emergency response efforts can be found [here](#). It should be noted that Newsom has issued 10 executive orders in the last week to facilitate a quick response to the outbreak.

California's Executive Order N-31-20 in Anticipation of Mass Lay-offs

As California employers brace for the difficult days ahead and face tough choices about its workforce, Gov. Newsom signed [California's Executive Order N-31-20](#), shortening the notice requirements mandated by California's Worker Adjustment and Retraining Notification (WARN) Act applicable to unforeseeable mass layoffs, relocations and terminations from 60 days to as soon as practicable. The Labor Workforce and Development Agency should provide further guidance on the Order by the end of today. Under the Order, an employer must still give the same types of notice to the affected employees and government agencies, however the employer is not required to provide the ordinary 60 days' written notice so long as the employer gives as much notice as is "practicable" and, at the time such notice is given, provides a brief statement of the basis for reducing the notification period. The employer must order "a mass layoff, relocation, or termination" that is caused by COVID-19-related "business circumstances that were not reasonably foreseeable as of the time that notice would have been required. Finally, an employer must include the following statement in any written notice given after March 17, 2020: "If you have lost your job or been laid off temporarily, you may be eligible for Unemployment Insurance (UI). More information [here](#) on UI and other resources available for workers .

The Federal WARN Act already includes unforeseeable business circumstances as an exception to the 60 day notice period. Like the Order issued by Gov. Newsom, the exception applies to both closings and layoffs that are caused by business circumstances that were not reasonably foreseeable at the time notice would have otherwise been required. Given that an important indicator of an unforeseen business circumstance is that the circumstance is caused by some sudden, dramatic, and unexpected condition outside of the employer's control, the COVID-19 health crisis would likely qualify under this exception.

National

President Trump on Sunday said the National Guard had been activated in New York, California and Washington and that the federal government would provide additional resources to help those states combat the coronavirus.

Families First Coronavirus Response Act: What Employers Need To Know

Note: While the law was enacted on March 18, 2020, it does not take effect until April 2, 2020

The recently enacted federal [Emergency Paid Sick Leave Act](#) (part of the Families First Coronavirus Response Act) requires private employers that employ fewer than 500 employees and public employers to provide an additional 80 hours of emergency paid sick leave (E-PSL) to full time employees who are unable to work or telework for certain reasons related to the coronavirus ("CV19") outbreak. Part-time employees must be provided E-PSL for the average number of hours they would work over a two-week period. Employers will receive a tax credit against payroll social security taxes for E-PSL payments made. The Act permits employees to use E-PSL in increments, likely corresponding to the smallest time increments tracked by the employer. E-PSL is available to employees who are unable to work or telework for the following reasons and at the applicable pay rates noted.

1. The employee is subject to a federal, state, or local quarantine or isolation order related to CV19. Pay is at the greater of the employee's regular rate or applicable minimum wage, but capped at \$511 per day and \$5,110 in the aggregate.
2. The employee has been advised by a health care provider to self-quarantine because of CV19 concerns. Pay is at the greater of the employee's regular rate or applicable minimum wage, but capped at \$511 per day and \$5,110 in the aggregate.
3. The employee chooses to obtain a medical diagnosis because the employee is experiencing symptoms of CV19. Pay is at the greater of the employee's regular rate or applicable minimum wage, but capped at \$511 per day and \$5,110 in the aggregate.
4. The employee is caring for or assisting an individual who is subject to an order or recommendation as described in 1 or 2 above. Pay is at two-thirds of the greater of the employee's regular rate or applicable minimum wage, but capped at \$200 per day and \$2,000 in the aggregate.
5. The employee is caring for the employee's child because of school or daycare closure, or because the childcare provider is unavailable, due to CV19. Pay is at two-thirds of the greater of the employee's regular rate or applicable minimum wage, but capped at \$200 per day and \$2,000 in the aggregate.
6. The employee is experiencing any other substantially similar condition specified by Human Health Services. Pay is at two-thirds of the greater of the employee's regular rate or applicable minimum wage, but capped at \$200 per day and \$2,000 in the aggregate.

The new law will be effective on April 2, 2020 (15 days after it is signed by the President) and will expire on December 31, 2020. E-PSL will be available for immediate use to all employees regardless of tenure, but no unused E-PSL will carry over to 2021. There is no requirement to cash out E-PSL on separation of employment. The Act is in addition to, and does not diminish, other paid leaves available under union contracts, employer policies, and other federal, state, or local laws. Thus, employers in Oregon and Washington must track other paid leaves separately from E-PSL and permit employees to use all available leaves. Employers may not require employees to use other available leaves, such as PTO or paid sick leave required by state law or city ordinance, before using E-PSL. Employers also may not require an employee to find a replacement to cover the hours for which the employee is using E-PSL.

After an employee first uses E-PSL, the employer may require the employee to follow reasonable notice procedures in order to continue receiving E-PSL. E-PSL ceases beginning with the employee's next scheduled work shift immediately following the termination of the need for leave. But employers are prohibited from retaliating against an employee for taking E-PSL, filing a complaint, instituting proceedings related to the Act, or testifying in such proceedings. An employer's failure to provide E-PSL is deemed a failure to pay minimum wage and is subject to the same fines and damages under the Fair Labor Standards Act, including double damages.

An employer covered by a multiemployer bargaining agreement can comply by making contributions to the fund, plan, or program under the terms of the applicable collective bargaining agreement, as long as the employer ensures that employees can take the leave for these purposes under the agreement. The Department of Labor will prepare a model notice, which employers must post within seven days of enactment where other employee notices are posted. We recommend also providing notice to remote employees by e mail or other effective means.

Employers will have to carefully track leaves under these statutes, and in the fluid situation that we face, there are likely to be issues. Employers should be sure to have someone carefully attuned to sick leave use and banks, and larger employers anticipating many leave issues should consider implementing systems to manage employees' questions, so that human resources professionals can manage leave while also ensuring that employees' questions are answered. Similarly, in dealing with the inevitable errors that will occur from tracking to payment, employers should promptly and fairly consider employees' concerns and address and fix the errors as soon as they can.

Emergency Paid Sick Leave

- The paid sick leave portion of the Act requires covered employers to provide all employees who cannot work or telework due to COVID-19 related circumstances, with up to 80 hours of paid sick time, prorated for part-time employees. Employees are eligible if they meet any one of the following circumstances:
 - The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
 - The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
 - The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
 - The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).
 - The employee is caring for a son or daughter if the school or place of care of the son or daughter has been closed, or the childcare provider of the son or daughter is unavailable, due to COVID-19 precautions.
 - The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

If an employee is taking the leave for any one of the first three reasons listed above, the employee must be compensated at the higher of his or her regular rate, the federal minimum wage, or the local minimum wage. If an employee is taking the leave for one of the three subsequent reasons listed above, the employee must be paid two-thirds of the rate he or she would otherwise receive. This paid leave is separate and above any existing sick leave entitlements that employees may already have. As noted above, compliance with the provisions of the emergency paid sick leave portion of the Act also requires employers to **post notices** explaining employees' entitlement to the paid sick leave. Similar to the emergency family and medical leave provisions, the Act provides that the Secretary of Labor shall have the authority to exclude certain health care providers and emergency responders, as well as small businesses with fewer than 50 employees from the paid sick leave requirements.

Small Business Interruption Loans

This measure provides Small Business Interruption Loans for businesses with 500 employees, unless the covered industry's SBA size standard allows more than 500 employees; allows not for profit entities to be eligible for loans made under this Act; increases the maximum 7(a) loan amount to \$10 million through December 31, 2020; and expands allowable uses of 7(a) loans to include payroll support, such as paid sick or medical leave, employee salaries, mortgage payments, and any other debt obligations. This measure also streamlines loan determination processes and waives certain prepayment penalties, borrower and lender fees to provide further flexibility and enhanced access to capital for small business borrowers.

2020 Recovery Rebates for Individuals

This measure provides recovery checks of up to \$1,200 to eligible individuals, providing cash immediately. Married couples who file a joint return are eligible for up to \$2,400. Those amounts increase by \$500 for every child in the home. These checks are reduced for higher income taxpayers and begin phasing out after a single taxpayer has \$75,000 in adjusted gross income and \$150,000 for joint filers. The IRS will base these amounts on the taxpayer's 2018 tax return. The rebate amount is reduced by \$5 for each \$100 a taxpayer's income exceeds the phase-out threshold. The amount is completely phased-out for single taxpayers with incomes exceeding \$99,000 and \$198,000 for joint filers. The IRS will base these amounts on the taxpayer's 2018 tax return.

Delay of Tax Deadlines

This measure extends the April 15th Federal income tax filing date to July 15th, giving individuals more time to file their tax returns given the limitations caused by the COVID-19 emergency. The filing date would be aligned with the extended payment filing date already announced by the Internal Revenue Service. The provision also allows all individuals to postpone estimated tax payments due from the date of enactment until October 15, 2020.

Special Rules for Use of Retirement Funds

Consistent with previous disaster-related relief, this measure waives the 10-percent early withdrawal penalty for distributions up to \$100,000 from qualified retirement accounts for

coronavirus-related purposes. In addition, income attributable to such distributions would be subject to tax over three years, and the taxpayer may retribute the funds to an eligible retirement plan within three years without regard to that year's cap on contributions. Further, the provision provides flexibility for loans from certain retirement plans for coronavirus-related relief.

Emergency Family and Medical Leave

Employees who have been employed for 30 consecutive days will be eligible for 12 weeks of job protected leave if they are unable to work (or telework) due to a need to care for a child under 18 years of age because the child's school or place of care has been closed or because the childcare provider is unavailable due to COVID-19. While the first 10 days of the leave may be unpaid, the remainder must be paid at no less than two-thirds of an employee's regular rate of pay, not to exceed \$200 per day and \$10,000 in the aggregate. Employees may choose to use previously available sick leave, vacation leave, or paid time off; however, employers cannot require employees to utilize such leave. The Secretary of Labor has the authority to issue regulations to exclude certain health care providers, as well as employers with fewer than 50 employees, from the emergency family and medical relief provision's requirements.

Tax Credits

Tax credits are available to help off-set the costs of the paid leave requirements, subject to certain caps. Employers can file for a refundable tax credit for paid sick leave or family leave—they may seek a credit of up to \$511 per day for an employee's own sickness or self-isolation and a credit of up to \$200 per day when employees have taken time off work to care for a child after a school or childcare closure or an ill family member.

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