

COVID-19 Update From EKA – March 31, 2020

EKA's media, Government, public relations and crisis support services teams are tracking the state, local and national government responses to the COVID-19 crisis. This update has been prepared for informational purposes only and is not offered, nor should be construed, as legal advice. Below are some of the significant government-related developments over the last 24 hours. All hyperlinks below are live and will bring you to the information mentioned.

COUNTY OF LOS ANGELES

Board Meeting

The LA County Board of Supervisors will meet today to discuss COVID-19 relief efforts. Two items are drawing a great deal of interest.

Protections For Workers

The measure would provide 14 Days of paid sick leave to all workers and prohibit retaliation against those who take it. It would mandate paid time for and access to hand-washing and sanitizing, provision of protective gear, and appropriate training for those still at work, including grocery workers, food service workers, and delivery drivers.

- **Rent Relief**

The measure would institute a complete and universal eviction moratorium. It would provide rent forgiveness and allow tenants to have 24 months to repay back rent, with no late fees or interest charges.

Gun Stores

Sheriff Alex Villanueva, who was sued by gun-rights groups after trying to shut down firearms dealers in the wake of coronavirus concerns, said that he is abandoning the effort. The Sheriff said he's heeding a federal Department of Homeland Security advisory issued on Saturday that listed gun and ammunition dealers as "essential critical infrastructure workers." The Sheriff called the non-binding memo "persuasive" and announced that his department wouldn't order or recommend closing businesses that sell or repair firearms or sell ammunition in the County.

Closures

Click [here](#) to see a map of the temporary closures of public trails and trailheads, beaches, piers, beaches bike paths and beach access points in the County.

County CEO

The County Board of Supervisors voted March 10 to appoint CEO Sachi Hamai's chief deputy as acting CEO effective March 31. However, Hamai reconsidered in light of the COVID-19 crisis and now is reevaluating and will provide a new date toward the end of May. Staying on until May will also mean that Hamai will remain in charge as her office develops a proposed budget for next year.

CITY OF LOS ANGELES

Los Angeles Convention Center

A transformation is underway inside the Los Angeles Convention Center as members of the National Guard set up dozens of beds, preparing the center for use as a federal field hospital. Mayor Garcetti said he would be announcing in a few days how the convention center will be used.

New Motions

As previously detailed, the Los Angeles City Council met on Friday for the first time to discuss a range of COVID-19 specific issues as well as regular "city business" items. Click [here](#) to view the new motions that were introduced that were not previously available. Of potential interest are the motions stamped "For Placement On Next Regular Council Agenda To Be Posted" (starting on page 20). They will be on the next agenda – whenever that meeting might take place – also assuming the next meeting will be "regular" instead of "special." Certainly, anything, including the new motions and those not listed below, could be scheduled since there are no committee meetings. These motions generally cover:

- Possible forbearance of CITY loans to Small Businesses
- Instruct the Department of Building and Safety to relax quality of life and vegetation related code enforcement activities.
- Temporarily waive the Code Violation Inspection Fee (CVIF) and extend the Non-Compliance Fee (NCF) payment deadline
- Create an exception that no appeal fee shall be required to request an extension of time on an order issued by the Department of Building and Safety
- Request City contracting departments, to pay any outstanding invoices to qualified small businesses

Farmers Markets

Mayor Garcetti ordered the suspension of all farmers markets due to concerns about large crowd gathering despite coronavirus concerns.

Supplemental COVID-19 Paid Sick Leave for Large Employers

As detailed in previous updates, the City Council passed an ordinance mandating employers with 500 or more employees nationally offer Supplemental Paid Sick Leave for various COVID-19 related reasons described below. Under the Ordinance, covered employers must offer 80 hours of Supplemental Paid Sick Leave to employees who perform work within the geographic boundaries of the City of Los Angeles. However, the Ordinance caps the total amount to be paid to no more than \$511 per day and no more than \$5,110 in the aggregate. An employer may not condition the Supplemental Paid Sick Leave on receipt of a doctor's note from the employee. Covered reasons for the Supplemental Paid Sick Leave to include:

- Time off because a "public health official or health provider requires or recommends the Employee isolate or self-quarantine to prevent the spread of COVID-19;"
- The employee takes time off because they are at least 65 years old or has a health condition that puts them at risk;
- The employee needs to care for a family member who is not sick, but who public health officials or healthcare providers have required or recommended self-quarantine; or
- The employee needs to provide care to a family member whose senior care provider, school, or childcare provider is closed.

An employer's obligation to provide the 80 hours of Supplemental Paid Sick Leave shall be reduced for every hour an employer allowed an employee to take leave for any of the covered reasons listed above on or after March 4, 2020. The Ordinance expires on December 31, 2020, unless the City Council takes action to extend the Ordinance.

COVID-19 testing:

The Mayor announced that the City is ramping up the efforts to expand access to tests in communities across L.A., starting with the elderly who are considered most and at-risk. People who are over age 65 or have chronic underlying medical conditions and are experiencing symptoms — such as cough, shortness of breath or fever; individuals who have been exposed to a confirmed case of COVID-19 will be able to get tested. For those who meet the criteria, click [here](#) to see if you are eligible for testing.

Rent Increases & Ejections

Mayor Garcetti signed an emergency [order](#) to halt any new rent increases on residential units that are subject to the [City's Rent Stabilization Ordinance](#) (RSO). For tenants seeking eviction protection, the Ordinance bars evictions for residential and commercial tenants unable to pay their rent due to the pandemic. Renters will still have to pay what they owe, but residential tenants will have up to a year to pay it, while commercial tenants will have three months. Renters unable to pay would have to produce documentation such as medical bills or termination notices. Enough councilmembers had concerns that no one would pay rent that they voted down Councilmember Bonin's proposed "blanket" moratorium on evictions. The measure was one vote shy of the eight votes needed. (Councilmen Curren Price and Paul Krekorian recused themselves because they're landlords) Councilman Joe Buscaino said he was concerned a moratorium didn't address tenants partying or engaging in drug-dealing or prostitution. Councilman Bob Blumenfield, who also voted no, questioned the need for any moratorium given the current shutdown in the civil courts.

SACRAMENTO

Small Businesses

Governor Gavin Newsom signed an executive order that will provide tax, regulatory, and licensing extensions for businesses. The Executive Order allows the California Department of Tax and Fee Administration (CDTFA) to offer a 90-day extension for tax returns and tax payments for all businesses filing a return for less than \$1 million in taxes. That means small businesses will have until the end of July to file their first-quarter returns. Additionally, the Order extends the statute of limitations to file a claim for refund by 60 days to accommodate tax and fee payers. The Executive Order also includes extensions that impact state government workers, as well as consumers. For instance, the Department of Motor Vehicles will limit in-person transactions for the next 60 days, allowing instead for mail-in renewals. The Department of Consumer Affairs will waive continuing education requirements for several professions, also for the next 60 days. The Order will extend the Office of Administrative Law's deadlines to review regular department proposed regulations. The Order also extends by 60 days the time period to complete the investigation of public safety officers based on allegations of misconduct. Finally, deadlines for trainings, investigations, and adverse actions for state workers will also be

extended. A copy of the Governor's Executive Order can be found [here](#), and the text of the Order can be found [here](#).

COVID-19 Reproductive Health

California Attorney General Xavier Becerra and 21 other attorneys general are [sending a letter](#) to the U.S. Department of Health and Human Services and its U.S. Food and Drug Administration (FDA) requesting that they increase access to reproductive healthcare, including safe and legal abortion, during the COVID-19 pandemic.

Health Care Workers

Governor Newsom launched a significant new initiative to expand California's health care workforce and recruit health care professionals to address the COVID-19 surge. Health care professionals with an active license, public health professionals, medical retirees, medical and nursing students, or members of medical disaster response teams in California are all encouraged to join the new California Health Corps. Interested medical and health care professionals are encouraged to visit healthcorps.ca.gov for more information and to register for the California Health Corps. Medical doctors, nurses, respiratory therapists, behavioral health scientists, pharmacists, EMTs, medical and administrative assistants, as well as certified nursing assistants are encouraged to step up and meet this moment to help California respond to the outbreak.

The Governor also signed an executive order that will temporarily expand the health care workforce and allow health care facilities to staff at least an additional 50,000 hospital beds the state needs to treat COVID-19 patients. A copy of the Governor's Executive Order can be found [here](#), and the text of the Order can be found [here](#). The Governor believes the state can add 37,000 healthcare workers by asking recently retired providers, those in the process of getting a medical license in the state and students enrolled in medical or nursing schools to apply to the newly created [California Health Corps](#). Newsom's Executive Order allows the state Department of Consumer Affairs to waive licensing requirements and change the scope of practice of healthcare professions through June 30. The department is ordered to work with each licensing board to determine what those changes will look like. The few details are available as to what scope of practice changes will be made left many unsure of the effect.

NATIONAL

COVID-19 Economic Injury Disaster Loan Application

The SBA has established a dedicated site which provides details around the latest legislative provisions as they are passed, loan and grant details, how to apply, contact information, and additional resources to support you during this unprecedented time. Questions? Contact the SBA disaster assistance customer service center at 1-800-659-2955 or [email](#). To request a loan under SBA's Economic Injury Disaster Loan Program, click [here](#) to view the application and begin the process.

Loan Forgiveness:

- Loans may be fully or partially forgiven. Any portion of the loan used to make payroll, pay for utilities, rent, mortgage, and existing business debt may be forgiven, dollar for

dollar. To receive this dollar-for-dollar loan forgiveness, however, workers need to remain employed through the end of June. Traditionally, 7(a) loans must be repaid in full, depending on the repayment terms.

- In the case of reduced headcount, lenders may reduce the amount of forgiveness for businesses that lay off employees during the first eight weeks following the loan. If wages of employees who earn less than \$100,000 a year are reduced, the level of forgiveness may also get reduced.
- Businesses that have let employees go before accepting the loan will not be subject to penalties. If those businesses rehire employees after accepting the loan, they'll receive additional credit to cover wages.

Here's how the loan forgiveness is scheduled to work:

- Your company's expenses for the eight-week period after the origination of the loan will be analyzed.
- Every dollar your company spent on payroll, utilities, rent or interest on a mortgage debt will be added together. That amount will be forgiven, up to the total amount your company borrowed through the program.

There is one caveat, however. The amount that is forgiven will be reduced for businesses that lay off employees during the first eight weeks following the loan. Companies that reduce wages of employees who make less than \$100,000 per year by 25 percent or more will also have the forgivable amount reduced. Businesses that have already let employees go before accepting the loan will not be subject to such penalties. And if those businesses rehire employees after accepting the loan, they'll receive additional credit to cover their wages.

Midsized Businesses

The Federal Reserve has not yet announced the details of the loan programs and/or credit facilities it will create. However, the CARES Act does require the Treasury Secretary to ask the Federal Reserve to create a special direct loan program for businesses and nonprofit organizations with between 500 and 10,000 employees. The interest rate on such loans would be capped at 2% per annum, and for the first six (6) months, no principal or interest would be due. Applicants would have to certify that:

- They are a U.S. business with significant operations in the United States,
- They are not a debtor in a bankruptcy proceeding,
- The uncertain economic conditions created by the COVID-19 pandemic make the loan necessary to support ongoing operations,
- It will use the loan to bring its employment levels back to no less than 90% of its workforce as it existed on February 1, 2020, and that it will maintain such levels until September 30, 2020,
- It will not outsource or offshore jobs until at least 2 years after the loan is repaid,
- It will not abrogate existing collective bargaining agreements for the same period,
- It will remain neutral in any union organizing effort during the term of the loan, and
- It will agree to the dividend, stock buyback, and executive compensation restrictions described above. The dividend, stock buyback, and executive compensation restrictions can be waived if the Treasury Secretary determines that a waiver is necessary to protect

the Government's interests. But if a waiver is granted, the Treasury Secretary must appear before certain Senate and House committees to explain the rationale for the waiver.

Labor Neutrality

The [CARES Act](#) contains critical help for businesses; it may present potentially significant labor issues for any midsize company (500 to 10,000 employees) that receives direct loans under the Emergency Relief and Taxpayer protections portion of the Act. On page 524 of the bill, it states the recipient "will remain neutral in any union organizing effort for the term of the loan." **This** has been interpreted to **mean that if you employ between 500 and 10,000 employees and you take a loan under the CARES Act, you would be required to remain neutral when a union tries to organize your employees.** As written, by taking this loan, companies would have agreed to not communicate with employees at all about their preference or provide any information on union representation, or even respond to any misstatements that the union might tell employees to sway them to support the union. There are still questions about what "remain neutral" means under the CARES Act and whether that could include card checks.

The expectation is that this language could lead to union pressure on employers to enter into neutrality agreements to memorialize specific terms, which often include "card check" provisions. When there is a card check, the union merely has to obtain signatures from a majority of employees in a company to become the exclusive bargaining representative for all workers. This is a significant concession to the labor unions because it takes away the employees' existing right to vote for or against the union by secret ballot election conducted by the National Labor Relations Board (NLRB). Instead, a card check amounts to open voting because a union representative simply gets to ask the employee for his/her signature.

Department of Labor

Over the weekend, the Department of Labor issued the **third** round of Q&As (FAQs #38-59) aimed at helping employers administer emergency paid sick leave (EPSL) and paid FMLA leave (FMLA+) as part of the [Families First Coronavirus Response Act](#) (FFCRA) (pdf), which as of April 1, 2020, will provide relief to American workers in the wake of the coronavirus pandemic. In this [latest round of FAQs](#), DOL gave critical guidance that employers need to know, including the following:

1. Employers under 50 employees (which currently are not covered by the FMLA) are exempt from the FMLA+ and from one provision of EPSL, *but not all of the provisions* (FAQ # 58-59)
2. Employees can take no more than 12 weeks of FMLA, which includes any leave taken under FMLA+ (FAQ # 44). However, two Weeks of EPSL could be used in addition to the 12 weeks of FMLA+ (FAQ # 45).
3. Health Care Providers and Emergency Responders (and pretty much anyone who works with them) are excluded from protection under the EPSL and FMLA+ (FAQ #56-57)
4. Small Employers (24 or fewer Employees) Get Some Relief When it Comes to Restoration. Small Business Exemption Clarified—Employers with Fewer than 50 Employees May Be Exempt from FMLA+, and EPSL #5 (for School Closures/Childcare)—but NOT from other EPSL Reasons 1, 2, 3, 4 or 6 (FAQ #58-59)

For the first time, DOL gave smaller employers more clarity on how they would be exempt from the new law. DOL has clarified that small employers (those with fewer than 50 employees) – including religious or nonprofit organizations – may claim an exemption under FMLA+ and EPSL if the employer's authorized officer determines **one of the following** applies:

5. Providing FMLA+ and EPSL reasons #5 leave (school closures and child care unavailability) would cause the business's expenses and financial obligations to exceed its revenues and cause the business to cease operating at a minimal capacity;
6. The employee's absence would entail a substantial risk to the business's financial health or operational capabilities because of specialized skills, knowledge of the business, or responsibilities, the employee possesses; or
7. There are insufficient workers who are able, willing, and qualified to perform the labor or services provided by the employee(s) requesting childcare leave, and these labor or services are needed for the business to operate at a minimal capacity.

DOL indicates that school closures/childcare reasons for FFCRA leave (which is reason #5 for EPSL leave and the only reason FMLA+ is available) are the **ONLY** reasons for which this exemption is available (if one of the above criteria are met). This means that smaller employers with fewer than 50 employees – even those who can claim this exemption – are NOT exempt from providing EPSL for reasons #1, 2, 3, 4 and 6 (*i.e.*, the medical/family care-related reasons for EPSL).

12 Weeks of FMLA

One of the remaining questions being asked since the passage of FFCRA is whether the FMLA+ requires an *additional* 12 weeks on top of the 12 weeks already available under FMLA classic. (FAQ #44-45).

Full-time and Part-Time Employees

In its FAQs (FAQ #48-49) the DOL clearly defined who is a full-time and who is a part-time employee under the EPSL. In its latest guidance, the DOL makes clear that an employee is "full" time if their employer normally schedules them to work 40 or more hours per week. An employee who is not "full" time is "part" time, and that employee receives a number of EPSL hours equivalent to the number of hours the employee works on average over a 2-week period.

DOL Changes Previous Guidance

The DOL changed some of its previous guidance. The DOL eliminated much of its previous discussion regarding the specific types of documentation to support a leave request under EPSL and FMLA+, pointing employers instead to applicable IRS forms and information. However, the IRS has yet to publish guidance for employers on this issue. For school closures and childcare-related need for leave, the DOL indicates that additional documentation may be required beyond what "conventional" FMLA allows—such as a notification of such school closure, etc. But all indications seem to suggest that for medically necessary reasons for COVID-19 (EPSL reasons #1, 2, 3, 4, and 6), employers may still request appropriate supporting documentation, although given current realities, employers may find they need to, as a practical matter, relax traditional documentation standards they might impose under normal circumstances. Additionally, the DOL now says employers need not provide leave if employees do not provide materials sufficient to support a tax credit.

ARTICLES OF INTEREST

Legislative Operations During Emergencies

Chris Micheli, who is a lobbyist with Aprea & Micheli, as well as an Adjunct Professor of Law at the University of the Pacific McGeorge School of Law [wrote an article](#) regarding legislative operations during emergencies.

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