

## Weekly COVID-19 Update From EKA – September 23, 2020

### Happy Second Day Of Fall - Coronavirus Facts

It has been over six months since Governor Gavin Newsom declared a [state of emergency](#) in California (on March 4) in response to the COVID-19 pandemic. The [Safer at Home](#) order have been in place in Los Angeles since March 19. California's Coronavirus death toll has passed the 15,000 mark and the State has the most confirmed virus cases in the US with about 790,044. The State's infection rate has fallen to 3% in the last week, the lowest level since the first days of the pandemic. 200,000 people have now died of COVID-19 in the US.

### Previous EKA COVID-19 updates

Our previous COVID-19 updates can be found [here](#). Feel free to share our updates with friends and colleagues. We hope you find the information in the EKA updates and the questions they raise to be informative. If you have any COVID-19 government or communications questions, please reach out to any member of the EKA team.

### No-Cost Flu Shots Available

According to Public Health, an important step to take this fall is to get a flu immunization. It is highly likely that both the flu and COVID-19 will be present at the same time. Now more than ever, it is important to be protected from the flu by getting immunized. Anthem Blue Cross is hosting pop-up flu shot clinics in Southern California to anyone in the community **at no cost**. You do not have to be a member to receive a flu shot, so bring your family and friends. Most events are for anyone ages three and up, but restrictions may apply at certain events. To register and find out more about each event, click [here](#).

## REOPENING/CLOSING

### State Clears Nail Salons To Reopen, But LA County Still Restricts Them

Nail salon operators who have been fighting to reopen amid the coronavirus pandemic scored a major victory today when the State authorized the businesses to resume limited operations, but don't expect them to immediately open in Los Angeles County. Individual counties can impose stricter regulations than the State, based on local COVID-19 data. Los Angeles County health officials have previously said they don't plan to ease any more business restrictions until at least the end of September to ensure the County does not experience a post- Labor Day spike in cases. Although the exact guidelines were not immediately released, the State will likely mandate limited indoor capacity, along with standard measures such as mandatory face coverings and social distancing.

### LA County Could Advance In State's COVID Matrix By October

According to a report on [Fox 11](#), Los Angeles County may move into the next tier of the State's economic-reopening matrix by sometime in October. The County is in the most restrictive, or "purple," level of the State's four-tier virus-tracking roadmap. The County already has a low

enough seven-day average testing positivity rate — around 3.2% — to move to a less-restrictive tier, but average new case numbers are still too high, currently averaging 8.1 cases per 100,000 residents. The state threshold for advancing to the "red" tier is seven cases per 100,000. Health officials have said repeatedly they will not consider any more business reopenings in the County until at least late September, after determining if virus cases and hospitalizations increase following the Labor Day holiday weekend — the way they did after Memorial Day and the Fourth of July. If the County gets its average new case numbers below seven per 100,000 residents, and maintains that level for two weeks, the County will be able to move into the State's "red" tier. That would allow more businesses to reopen, including potentially movie theaters and gyms, as well as school campuses for in-person learning.

### **New CDC Guidance for Reopening Schools Creates Color-Coded Risk Scale**

The Centers for Disease Control and Prevention issued [new guidance](#) Wednesday for schools seeking to open for in-person learning, using various community infection rates and school safety thresholds to create a five-tiered color-coded risk scale. According to USA Today, one early analysis of the CDC guidance is that nearly 90% of people in the US live in counties that fall into the two highest risk categories for reopening schools. The release of the guidance, which recommends aggressive thresholds, reignited a wave of criticism over the lack of federal guidance and left many wondering how many schools would have decided not to reopen for in-person learning if officials had this guidance earlier. CDC recommends the use of three indicators, including two measures of community burden – the number of new cases per 100,000 persons within the last 14 days and the percentage of tests that are positive during the last 14 days – as well as one self-assessed measure of schools' ability to adhere to various mitigation strategies.

### **CDC Says Revised Guidance On Airborne Coronavirus Transmission Posted In Error**

According to [The Hill](#), The Centers for Disease Control and Prevention (CDC) said Monday that [revised guidance](#) quietly posted on Friday that said airborne transmission was thought to be the main way the virus spreads was "posted in error." The revised guidance has now been removed from the CDC's web site. "CDC is currently updating its recommendations regarding airborne transmission of SARS-CoV-2 (the virus that causes COVID-19)," the CDC wrote. "Once this process has been completed, the update language will be posted." The CDC also added new measures to its information about protecting yourself and others. Previously, CDC suggested maintaining "good social distance" of about 6 feet, washing hands, routinely cleaning and disinfecting surfaces and covering your mouth and nose with a mask when around others. Now, it says, "stay at least 6 feet away from others, whenever possible," and continues to direct people to wear a mask and routinely clean and disinfect. However, it also now says people should stay home and isolate when sick, and "use air purifiers to help reduce airborne germs in indoor spaces." Masks, it notes, should not replace other prevention measures.

### **Disneyland, Theme Park Reopening Announcement Coming Soon**

According to [published reports](#), A fed up Disneyland is demanding that Gov. Gavin Newsom reopen California theme parks now after more than six months of coronavirus closures and a lack of guidance from the State on safely reopening the major tourist destinations. Disney parks

chairman Josh D'Amaro ramped up the pressure on Newsom to let Disneyland reopen during a virtual news conference on Tuesday, September 22 from inside the Anaheim theme park. Governor Gavin Newsom [continued to tease](#) a reopening announcement for Disneyland and other theme parks. Newsom has [received pressure to provide guidance](#) not only from the theme park industry as a whole, but [escalated pressure directly from Disneyland President Ken Potrock](#). News of Potrock's disappointment came out as Newsom was making his live address, and while Newsom continued to tease a reopening announcement, he fell short of actually providing any details. According to sources familiar with the matter, Disneyland was targeting a late September reopening, but recent actions by the Governor have called that into question. Newsom said that he plans on making "announcements soon on theme parks and amusement parks". Newsom continued talking and upped the ante, saying that he will be "making public the fruits of those negotiations very, very shortly. [No COVID-19 outbreaks have been reported](#) at Disney, Universal, SeaWorld, Busch Gardens, Six Flags, Legoland and Cedar Fair parks in Florida, Texas, Illinois, Pennsylvania, Ohio, New Jersey, Virginia and Michigan, according to state health agencies and theme park officials.

## LOS ANGELES COUNTY

### **CARES Act Childcare Grant Program**

Applications for the Los Angeles County COVID-19 CARES Act Childcare Grant Program are open through Friday, September 25, 2020, at 12 p.m. This program will provide grants of \$10,000 or \$40,000 to eligible childcare operators in Los Angeles County, who have been impacted by the COVID-19 pandemic. Click [here](#) to learn more about the program and how to apply.

### **\$10 Million Business Grant Program**

The LA County Board of Supervisors approved a new \$10 million grant program requested to help breweries and other small businesses that have remained closed or restricted by LA County health officer orders despite being allowed to open under the State's health order. Although breweries in Tier 1 counties have been allowed to open under the State's health order if they can partner with a food service, Los Angeles County's health officer order has kept many local breweries that do not qualify as restaurants closed for on-site service to slow the spread of the virus. Small businesses that have remained closed or faced substantial operating restrictions due to health officer orders will be eligible for the grant. Priority will be given to those small businesses subject to LA County health officer order restrictions that are more stringent than those required by State health officer order, such as breweries. These small businesses also include wineries, family entertainment centers, and card rooms. Information about how to apply for the grant will be posted on the LA County Development Authority website. Click [here](#) for more information. According to [Spectrum News](#), the [LA County Brewers Guild](#) waged a campaign against the health department to follow the state health officials order and permit breweries to reopen. Their Save LA Brewers campaign represents 93 brewers within LA County.

### **Mall Sues LA County Over Indoor Shopping Restrictions**

The Los Angeles Times [reported](#) that the operator of a sports apparel store in Del Amo Fashion Center in Torrance has filed a lawsuit against Los Angeles County in an effort to ease countywide restrictions on operating businesses in indoor malls during the COVID-19 pandemic. Also objecting to the limits is the largest owner of indoor malls in the County, Unibail-Rodamco-Westfield, which called the County's restrictions that are now stricter than state guidelines an "undue hardship" on the company and its store tenants. In a proposed class-action lawsuit filed last week in the US District Court for the Central District of California, the owner of Rivas Sports Inc. said it was unfair for the County to shutter "nonessential" businesses like hers that have their front doors inside of an enclosed mall. Stores in shopping centers that have their own doors to the outside can still operate under safety guidelines issued by the County in May as pandemic-related restrictions on businesses were eased. Interior mall stores were allowed to operate at 50% occupancy until they were closed by the State in July as infections surged.

### **COVID-19 Testing**

Please get tested if:

- You are having symptoms of COVID-19.
- If you have been in contact with a person who has tested positive for COVID-19.
- If you think you were exposed because you were working, especially in essential services, in a place where you are frequently exposed to other people who may not be taking precautions.
- If you share living spaces with other people who may be positive for COVID-19.
- If you have been in a crowd or gathering where people were close together and not wearing face coverings and/or keeping their distance.

If you think you need a test, the County encourages you to call your doctor first. Testing is best done by a healthcare provider, so that they can monitor your care. If you do not have a doctor or are unable to contact them, dial 2-1-1 for a referral to a provider. Other private COVID-19 testing may be available. Find a community testing site near you (e.g., Rite Aid, UCLA Health, UrgentMED, Exer Urgent Care, Quest) with the [California for ALL Testing Tool](#). Click [here](#) to learn more about COVID-19 testing in LA County. Click [here](#) to visit the COVID-19 testing website for more information and to sign up for a **free test**. Note: testing availability is subject to change and testing is by appointment only. Testing will be limited over the holiday weekend. And whether or not you get tested for COVID-19, remember:

### **Stay Housed LA County**

The Los Angeles County Board of Supervisors launched Stay Housed LA County, a countywide initiative to provide legal assistance and support for tenants facing eviction amid the COVID-19 pandemic. The launch included the release of [StayHousedLA.org](#), a website connecting tenants with useful information about their rights, workshops for residents who need legal assistance, and other support. Stay Housed LA County is a partnership between the County of Los Angeles, legal aid groups and community-based organizations to provide emergency support to tenants in need.

## CITY OF LOS ANGELES

### **Apartment Association Lawsuit**

The Apartment Association of Greater Los Angeles filed a Preliminary Injunction Motion against the City of Los Angeles seeking an emergency court order to overturn City's Eviction Moratorium and Rent Freeze. AAGLA has previously filed a [lawsuit against the City of Los Angeles](#) in Federal Court in June challenging the City's eviction ban, prohibitions on charging of late fees or interest, and moratorium on annual rent increases. To read the AAGLA press release, click [here](#).

## SAN DIEGO

### **County Considers Lawsuit Against Gov. Newsom to Avoid Most Restrictive Tier**

According to NBC7 in San Diego, the San Diego County Board of Supervisors discussed possible legal action against Governor Gavin Newsom to keep him from moving the County into the State's most restrictive coronavirus monitoring tier. No decisions have been made just yet. San Diego County is likely headed for demotion to tier 1 (purple/widespread), thanks in part to hundreds of COVID-19 cases reported among students at San Diego State University driving up the County's case rate (7-day average of daily news cases per 100,000 residents). Case rate is one of two metrics considered by the State when assigning counties to their appropriate tier within [California's reopening plan](#). Public Health Officer Dr. Wilma Wooten has said that without SDSU's 749 cases, the County's case rate (7.9) would safely fall in the 4 to 6.9 range required to stay in tier 2 (red/substantial).

## RIVERSIDE & SAN BERNARDINO

### **Riverside County Can Reopen More Businesses If It Maintains COVID-19 Metrics For Two Weeks**

Riverside and San Bernardino counties remain in the purple tier, which is the lowest level of California's reopening framework, and must continue to see their COVID-19 metrics trend downward in order to move into the next level — the red tier. In the red tier, nail salons, movie theaters and places of worship can reopen indoors. It also allows for indoor restaurant dining. Riverside and San Bernardino counties could move to a less restrictive in the coming weeks if their COVID-19 numbers continue to trend downward. In determining whether a county can move to the next phase, the State looks at two metrics: positivity rate and case rate. To move to the next tier — the red tier — each Inland Empire county needs to document fewer than seven new COVID-19 cases per 100,000 residents on a rolling seven-day average, and report a positivity testing rate between 5% and 8% in the same period, for a total of two weeks. Both San Bernardino and Riverside counties' positivity rates had ticked down to 6.4%, as of Tuesday.

### **Riverside County Groups Request Faster Pace**

Eighteen business groups — including the Greater Coachella Valley Chamber of Commerce, the Desert Business Association and chambers from Palm Springs, Rancho Mirage and Palm

Desert — urged the Governor in a letter to show flexibility and allow a county-based plan that "strikes the appropriate balance between public health and economic survival." They're arguing in favor of a reopening plan that the County put forward in August, which will allow more indoor operations followed by small gatherings like weddings and group meetings, and then allow the reopening of gyms, movie theaters and bars

### **San Bernardino County Has 3rd Most Coronavirus Cases In California**

According to the San Bernardino Sun, San Bernardino County now has the third-most confirmed coronavirus cases in California. The County overtook Orange County for third place on Thursday, September 17, with 51,467 cases compared to 51,399 for Orange County, a gap of 68 cases. That gap has now widened to 448 cases, with Orange County reporting 52,201 cases and San Bernardino County reporting 52,649 cases Monday, September 21. In late July, Orange County had about 6,500 more cases than San Bernardino County. Since then, San Bernardino County's number of cases has almost doubled, while Orange County's has gone up about 60%. Los Angeles County has the most cases in the State, followed by Riverside County, [according to the state Department of Public Health](#). Orange and San Diego counties, which each have about a million more residents than San Bernardino County, are fourth and fifth.

## **ORANGE COUNTY**

### **Orange County Could Stay In The Red Tier Longer**

According to the Orange County Register, Orange County is half-qualified for the next coronavirus tracking tier, colored orange for "moderate" risk, which would mean more businesses and public sectors could reopen and less occupancy restrictions on those that have. Local shares of COVID-19 tests that are coming back positive are 3.9%, an improving metric that makes the county orange-tier material, in part. But the rate of new cases each day came in this week at 4.7 cases per 100,000 residents, dashing hopes that Orange County could spend only the minimum three weeks in the red tier and briskly move on to the orange tier by September 29. To advance a tier, counties' metrics have to meet the next tier's targets for two weeks, according to state health department [rules](#). Orange County's case rate needs to drop below 4 new daily cases per 100,000 residents for two weeks straight to switch tiers, and testing positivity needs to remain below 5%. State health officials calculate [county tier metrics](#) every Tuesday. If, for example, Orange County's case rate and testing positivity both land in the orange tier range on September 22, and again on September 29, it could progress to that tier on October 6, at the earliest. Similarly, counties in trouble can regress a tier if metrics get worse over time.

## **SACRAMENTO**

Governor Newsom's executive orders can be found [here](#).

### **Governor Newsom Signs COVID-19 Legislation**

Governor Newsom signed two bills as part of his worker protection package, SB and AB 685. SB 1159 expands access to workers' compensation and makes it easier for first responders, health

care workers and people who test positive due to an outbreak at work to get the support they need, including necessary medical care and wage replacement benefits. AB 685 ensures timely notification to employees and local and state public health officials of COVID-19 cases at workplaces. SB 1159 (Hill) expands access to workers' compensation by creating a rebuttable presumption for front line workers -- health care workers, firefighters and peace officers. Creating a presumption removes burdens of access to workers' compensation for those workers who most likely got infected at work. Additionally, the bill establishes a rebuttable presumption when there is a workplace outbreak over a 14-day timeframe. Under AB 685 (Reyes), employers must report an outbreak to local public health officials. Employers must also report known cases to employees who may have been exposed to COVID-19 within one business day. This bill strengthens Cal/OSHA's enforcement authority by providing clear authority to close a worksite due to a COVID-19 hazard and reducing the timeframe for COVID-19 citations.

Governor Newsom has enacted other components of his [worker protection package](#) in recent weeks. Last week, he [signed](#) AB 1867, legislation that immediately ensured access to paid sick leave for every California employee, closing gaps in federal and State law. He also [advanced significant funding](#) for worker and employer outreach, education and enforcement activities related to COVID-19. This worker protection package builds on the Newsom Administration's ongoing efforts to protect workers, among them expanded child care, access to testing and building a pipeline of personal protective equipment to help workers stay safe on the job. The Administration has also released robust workplace safety and health guidance that emphasizes masks, distancing, cleaning, hand washing, screenings and staying home if feeling sick.

### **CA Not Accepting New Unemployment Claims For 2 Weeks**

As reported by numerous media outlets, California's unemployment system will stop accepting new claims for the next two weeks, following the publication of a report finding the State's Employment Development Department (EDD) in need of immediate reforms. The two-week "reset" comes after the EDD has drawn criticism for delaying payments to more than 1 million unemployed Californians, with many applicants saying they're unable to reach the department for help fixing a claim. The new [report](#) found a number of issues inside EDD, including an emphasis on preventing fraud at all cost, even if that means delaying payments to many applicants. Findings in the report include:

- There has developed at EDD a culture of allowing fear [of] fraud to trump all other considerations.
- The department's backlog of unresolved claims has grown to nearly 1.6 million.
- EDD staffers can only manually process about 2,400 claims per day. But lately, the department has been flagging about 20,000 claims for manual review every day.
- Callers to the department's core call center have no more than a one in 1,000 chance of reaching a human operator.
- Applicants who don't speak English "have a difficult, if not impossible, time navigating the unemployment application process."

During the department's two-week reset, the EDD plans to roll out a new identity verification tool. Staffers will also begin work to clear the backlog. But resolving all those pent-up claims could take until the end of January. The EDD plans to implement other changes, such as allowing users to upload documents from their smartphones, which could help decrease the department's continued reliance on snail mail. While the department won't accept new claims for the next two weeks, those who already have claims open will still be able to file for benefits and receive ongoing payments.

### **Governor Signs Bill Extending Job-Protected Family Leave**

Governor Newsom signed legislation ensuring millions more Californians can utilize Paid Family Leave benefits. SB 1383 was developed through the Paid Family Leave Task Force convened by the Administration last year and builds on previous work to extend Paid Family Leave benefits from six to eight weeks for each parent of a newborn. SB 1383 by Senator Hannah-Beth Jackson ensures job-protected leave for Californians who work for an employer with five or more employees to bond with a newborn, care for a seriously ill family member, address a military exigency or care for their own illness. This aligns the employer size threshold under the California Family Rights Act (CFRA) with the employer size threshold in Pregnancy Disability Leave, a program that has been in place since 1978. The Governor also recently signed AB 1867, a budget trailer bill, to create a small employer family leave mediation pilot program. Under this first-of-its-kind program, small employers will be able to request free mediation before an employee is allowed to file a lawsuit in court over leave issues.

## **LEGAL DEVELOPMENTS**

### **Federal Judge Rules PA COVID Shutdown Orders Unconstitutional**

A federal judge in the Western District of Pennsylvania held that significant portions of Governor Wolf's COVID-19 related shutdown orders were unconstitutional. Importantly, the Court's ruling struck down orders directed at *both* "First Amendment" activity, *and* at restricting the business activities of "non-life-sustaining" businesses. The Court recognized that Governor Wolf's actions were "undertaken with the good intention of addressing a public health emergency." Nevertheless, the Court ruled, "even in an emergency, the authority of government is not unfettered. The liberties protected by the Constitution are not fair-weather freedoms — in place when times are good but able to be cast aside in times of trouble." To read the ruling, click [here](#).

### **Pandemic Telework Does Not Create Presumptive Right to Telework Post-Pandemic**

The EEOC said pandemic telework does not create a presumptive right to post-pandemic telework as a reasonable accommodation for employees with disabilities. In an update to its "Technical Assistance Questions and Answers" on issues dealing with COVID-19 and the ADA and other equal employment opportunity laws, the EEOC's answers provide useful guidance for employers. As a baseline, the EEOC notes that any across-the-board treatment like a presumption is inconsistent with the EEOC's oft-repeated maxim that reasonable-accommodation inquiries must be addressed on an individualized basis. Instead, "[a]ny time an

employee requests a reasonable accommodation, the employer is entitled to understand the disability-related limitation that necessitates an accommodation" and then proceed through the interactive process accordingly regarding a potential reasonable accommodation. The EEOC recognizes a scenario under which the pandemic telework experience of an employee could be relevant to telework as a reasonable accommodation post-pandemic. If an employee renews a pre-COVID-19 request for teleworking as a reasonable accommodation, the EEOC suggests that this prior teleworking experience could be relevant in considering the renewed request. The pandemic telework "could serve as a trial period that showed whether or not this employee with a disability could satisfactorily perform all essential functions while working remotely, and the employer should consider any new requests in light of this information."

## NATIONAL

### **CDC Releases Guidance for Celebrating Halloween**

According to the new CDC guidance released September 21, many traditional Halloween activities like trick-or-treating, indoor costume parties and haunted houses, can be high-risk for spreading the coronavirus. Federal health officials ranked some popular Halloween from low to high risk. The CDC says to check and follow your local and State rules and regulations, and do not participate in any festivities if you have COVID-19 or have been exposed to someone who does. For a list of more activities and guidance about other upcoming holidays go to, [click here](#).

### **Small Businesses Could Be On Their Own As Hopes For Second PPP, More Stimulus Fade**

The chances of a second round of Paycheck Protection Program loans — or any small-business stimulus legislation from Congress — is beginning to fade as the election approaches. Small-business groups from across the spectrum, who had originally hoped for more swift action from Congress, are increasingly losing hope that help is on the way. The introduction of the so-called "skinny" stimulus by Senate Republicans and its quick defeat has only heightened concerns that further attempts to get more financial help to small businesses in the next few weeks will also fail. The latest legislation, which would have authorized a new round of PPP loans for the hardest-hit small businesses as well as a shield from some Covid-19-related liability claims, is just the latest stimulus package to fail to gain approval. The HEROES Act, passed by House Democrats in May, has languished before the Senate, and the Republican-sponsored HEALS Act was introduced in July but never received a vote in either chamber. Small-business owners are very concerned that Congress will not pass additional recovery legislation

### **New Stimulus Package Before The Election?**

According to various media reports, White House and Democratic negotiators are under a tight deadline to find common ground on [another stimulus deal](#) if they want to get the next round of stimulus checks into voters' hands before they mark their ballots in the November 3 election. Just how much time do they have? We've mapped out possible dates a bill could pass in a chart below. The Senate is [scheduled to break](#) till after the election following its current session, which ends on October 9 -- but that doesn't mean it's the final day a bill could pass. The House, for example, is prepared to postpone the start of [its next break](#), originally scheduled for

October 2, until a deal is reached. If negotiators close in on a deal, Senate Majority Leader Mitch McConnell could compel the Senate to stay in session, or to come back early to vote on a proposal.

## QUESTIONS EKA HAS RECEIVED

If you have a specific COVID-19 question, click [here](#) and we will attempt to answer it in our update.

### Can You Explain The Revised FFCRA Regulations?

the US Department of Labor ("DOL") issued much-anticipated revisions and clarifications to its Families First Coronavirus Response Act ("FFCRA") [regulations](#), in response to a US District Court for the Southern District of New York decision vacating certain portions of the earlier version of the regulations.

The District Court ruled that four parts of the FFCRA regulations relating to employee leave are invalid:

- The definition of an employee who is a "health care provider";
- The requirement that FFCRA leave is available only if an employee has work from which to take leave;
- The requirement that an employee may take FFCRA leave intermittently only with employer approval; and
- The requirement that employees who take FFCRA leave must provide their employers with certain documentation before taking leave.

In light of the District Court decision, the DOL reevaluated portions of its FFCRA regulations, reaffirming them in part, revising them in part, and adding further clarification. The DOL's revised regulations do the following:

- Revise the definition of "healthcare provider" to include only employees who meet the definition of that term under the Family and Medical Leave Act ("FMLA") regulations, and other employees who are employed to provide diagnostic services, preventative services, treatment services or other services that are integrated with and necessary to the provision of patient care which, if not provided, would adversely impact patient care;
- Reaffirm that employees may take paid sick leave and expanded family and medical leave only if work would otherwise be available to them and clarify that this requirement applies to all qualifying reasons to take such leaves;
- Reaffirm employees must obtain employer approval in order to take intermittent paid sick leave and expanded family and medical leave, and explain the difference between intermittent and additional requests for leave; and
- Clarify that employees must provide required documentation supporting their need for paid sick leave and expanded family and medical leave to their employers as soon as practicable, and clarify that employees must provide notice of the need to take expanded family and medical leave to employers as soon as practicable.

The DOL explains that individuals who provide services that affect but are not integrated into the provision of patient care are not covered by the definition. The DOL identifies "information technology (IT) professionals, building maintenance staff, human resources personnel, cooks, food service workers, records managers, consultants, and billers" as employees who are not "health care providers." (This list is non-exhaustive.) The DOL further explains that while the services provided by such employees may be related to patient care, "they are too attenuated to be integrated and necessary components of patient care."

### **The Work-Availability Requirement**

The DOL reaffirms that leave under the FFCRA is only available if the employer has work available to the employee. The regulations make clear that there must be "a legitimate, non-retaliatory reason why the employer does not have work for an employee to perform." The DOL provides the example that such may occur where an employer has temporarily or permanently ceased operations at the worksite where the employee works, or where a downturn in business forces the employer to furlough the employee for legitimate business reasons. Additionally, the DOL clarifies that employee eligibility would not be based on an "hour-by-hour assessment" as to whether work is available, but rather "whether the employee would have reported to work at all."

### **Employer-Approval Requirement for Intermittent Leave**

The DOL reaffirms employer approval is needed to take FFCRA leave intermittently in all situations in which intermittent leave is permitted. In doing so, the DOL provides an explanation of the difference between intermittent leave and consecutive requests for leave. It explains that intermittent leave is "leave taken in separate blocks of time *due to a single qualifying reason*, with the employee reporting to work intermittently during an otherwise continuous period of leave taken for a single qualifying reason," and it occurs "*only* when the employee has periods of leave interrupted with periods of reporting to work (or telework)" (emphasis added).

## **WHAT WE'RE READING**

### **LA Yanks Lifeline Away From Struggling Restaurants**

A Los Angeles city program to help restaurants stay in business during the pandemic has quietly been put on hold, the NBC4 I-Team has learned. Some restaurants tell NBC4 they were depending on that program to stay open. "It would have allowed us to at least make enough money to cover our expenses and pay some of our rent, said Vianey Sanderson owner of the Down and Out Restaurant and Bar on Spring Street in DTLA. To read the full story, click [here](#).

### **AB 685 – Employer Notices of COVID-19 Exposures**

On September 17, Governor Gavin Newsom signed [Assembly Bill 685](#) by Assemblywoman Eloise Gómez Reyes (D-Grand Terrace) into law as Chapter 84, to require public agencies to notify employees if they've potentially been exposed to COVID-19 at the worksite. The bill amends, repeals, and adds Sections 6325, 6432 and 6409.6 of the Labor Code. To read the full story, click [here](#).

### **Trump: Vaccines for All Americans by April**

President Donald Trump on Friday said that the US will manufacture enough coronavirus vaccines for every American by April. He said that a vaccine could be approved under an emergency use authorization as early as October, and once that happens, "we're ready to go immediately." But his timeline is at odds with members of his own Administration. The CDC says it could take six to nine months to make a vaccine widely available. Three vaccine candidates are currently in late-stage trials in the US. To read the full story, click [here](#)

### **California Recalls N95 Masks Obtained Through \$90M Contract With Santa Clara-Based Company**

California is recalling N95 masks obtained through a \$90 million contract with Advoque, a company based in Santa Clara, after federal regulators revoked certification for the masks last week. The California Department of Public Health announced Monday that organizations possessing Advoque N95 masks "immediately cease use and distribution of this product" and notify the State so officials can send replacements. To read the full story, click [here](#).

### **SB 1383 – Expanding California's Family Rights Act**

On September 17, Governor Gavin Newsom signed [Senate Bill 1383](#), by Senator Hannah-Beth Jackson (D-Santa Barbara), into law as Chapter 86. The bill [to expand protected-family leave](#), amended Government Code Section 12945.2, added Section 12945.2, and amended Section 12945.6. To read the full story, click [here](#).

### **California Labor Commissioner Releases FAQ and Model Notices for Statewide COVID-19 Supplemental Paid Sick**

Leave On September 9, 2020, the Governor signed Assembly Bill 1867 ("AB 1867") which mandated both food sector employers and other industries, including employers with 500 or more employees, to provide supplemental paid sick leave ("COVID-19 Supplemental PSL"). The California Labor Commissioner, charged with enforcement of the new laws, has issued a Frequently Asked Questions Page ("FAQ") regarding both new supplemental leaves. To read the full story, click [here](#).

### **California AB 685 Imposes New Notice And Reporting Obligations For COVID-19 Workplace Exposure**

On September 17, 2020, California doubled down on its efforts to keep non-remote employees safe from COVID-19 exposure. Governor Newsom signed AB 685, new legislation that allows the State to track COVID-19 cases in the workplace more closely. AB 685 expands Cal/OSHA's authority to issue Orders Prohibiting Use (OPU), otherwise known as Stop Work Orders, for workplaces that pose a risk of an "imminent hazard" relating to COVID-19, *i.e.*, hazards threatening immediate and serious physical harm. The law also prescribes exhaustive notice requirements in the event of a COVID-19 exposure in the workplace, which includes providing written notice to "all employees" who were at the worksite within the infectious period who may have been exposed to the virus. To read the full story, click [here](#).

## **Yelp Data Shows 60% Of Business Closures Due To The Coronavirus Pandemic Are Now Permanent**

Yelp released its latest Economic Impact Report, revealing business closures across the US are increasing as a result of the coronavirus. As of August 31, 163,735 businesses have indicated on Yelp that they have closed, a 23% increase since mid-July. According to Yelp data, permanent closures have reached 97,966, representing 60% of closed businesses that won't be reopening. To read the full story, click [here](#).

## **Coronavirus Testing Kiosk At Union Station Foretells Future Of Pandemic Recovery**

Enabling convenient access to reliable coronavirus testing like at this kiosk, where tests can be taken frequently with results provided quickly, is one of the primary goals for public health officials eager along with everyone else to put the coronavirus pandemic behind them. To read the full story, click [here](#).

## **Most of the US is headed in the wrong direction again with Covid-19 cases as deaths near 200,000**

Despite making progress [after a difficult summer](#), most of the US is heading in the wrong direction again as the nation closes in on 200,000 Covid-19 deaths. In 31 states, the number of new Covid-19 cases has increased by at least 10% this past week compared to the previous week, according to data Sunday from Johns Hopkins University. To read the full story, click [here](#).

## **Poorly Protected Postal Workers Are Catching COVID-19 By The Thousands. It's One More Threat To Voting By Mail**

More than 50,000 workers have taken time off for virus-related reasons, slowing mail delivery. The Postal Service doesn't test employees or check their temperatures, and its contact tracing is erratic. To read the full story, click [here](#).

## **Months Into The Pandemic, Dentists Are Finding Their New Normal**

A few months ago Washington, DC, periodontist Sally Cram was just getting used to being back in practice full-time. Cram had spent around \$20,000 outfitting her office for the pandemic: air purifiers, sneeze guards, a washer and dryer for scrubs. Since then, she says the cost of personal protective equipment — masks, gloves, gowns — has gone up. To read the full story, click [here](#).

## **New Stimulus Check: 6 Top Things You Need To Know About Another Payment**

After six months of talk about [second stimulus checks](#) and [skinny bills](#) and other [economic rescue proposals](#), who could blame you for losing the thread on where Washington lawmakers stand on a second round of payments? While [negotiations](#) have run hot and most recently cold, both Democrats and Republicans continue to express the need for more economic help for Americans. To read the full story, click [here](#).

## **Workers' Compensation And Employer Liability In The Era Of COVID-19**

With companies continuing to reopen for in-person operations amid the coronavirus (COVID-19) pandemic, many employers are left wondering if they could face increased liability related to employees contracting COVID-19 in the workplace. Liability related to contracting a virus in the workplace could take the form of a negligence action or a claim for workers' compensation. To read the full story, click [here](#).

### **PPP loans hide a hidden kicker: A big tax bill**

The federal Paycheck Protection Program was, by most accounts, instrumental in helping to provide money for many small businesses through the pandemic. According to the [Small Business Administration](#), the program — which ended August 8 — provided more than five million forgivable loans to small companies, amounting to \$525 billion. The loans were used not only to help keep their employees on the payroll, but also for other operating expenses such as rent and utilities. To read the full story, click [here](#).

### **Caputo Will Take A Leave Of Absence From Health Department.**

Michael R. Caputo, the embattled top spokesman of the cabinet department overseeing the coronavirus response, will take a leave of absence "to focus on his health and the well-being of his family," the Department of Health and Human Services announced Wednesday. Mr. Caputo's science adviser, Dr. Paul Alexander, will be leaving the department. To read the full story, click [here](#).

### **Invisible Company Owned By Rudy Giuliani Got Taxpayer-Backed PPP Money — But Where Did It Go?**

A payroll company owned by Rudy Giuliani, President Trump's personal attorney, took between \$150,000 and \$350,000 in taxpayer-backed emergency small business loans this spring. It's unclear what Giuliani did with the money. The loan reveals a previously unreported, 18-year-old company owned by Giuliani. A Salon investigation offers new insight into mechanisms of the former New York mayor and federal prosecutor's elaborate and purposefully obscure business, income and payment arrangements, which have reportedly been [the subject of subpoenas from federal investigators in the Southern District of New York](#). To read the full story, click [here](#).

### **COVID-19 Further Disrupts Testing for College Admissions and Placement**

As the pandemic continues to cause major shifts in the educational landscape, California's public colleges and universities are exploring how new admissions and placement approaches might promote equity and access. To read the full story, click [here](#).

### **California Is Turning The Corner On The Coronavirus. Will It Last?**

After months of bleak figures and forecasts, California now appears to be riding a wave of success beating back the coronavirus as officials express cautious optimism about what is next for the State. To read the full story, click [here](#).

### **Barr Says Calls For Coronavirus Lockdown Are The 'Greatest Intrusion On Civil Liberties' Other Than Slavery In US History**

Attorney General William Barr suggested on Wednesday that the calls for a nationwide lockdown to prevent the spread of the coronavirus were the "greatest intrusion on civil liberties" in history "other than slavery." The comments came minutes after he slammed the hundreds of Justice Department prosecutors working beneath him, equating them to preschoolers, in defense of his own politically tuned decision making in the Trump administration. To read the full story, click [here](#).

### **PPIC Statewide Survey: Californians and Their Government**

Most Californians remain concerned about contracting COVID-19, but a slim majority believe the worst is behind us. To read the full story, click [here](#).

### **State Tax Revenues Hit Hard by COVID-19**

Overall, states collected 7.5% less tax revenue in the four months from March to July, despite seeing an 82.1% spike in July from payments that had been delayed because of the onset of the coronavirus, according to a brief from The Urban Institute. The numbers are based on preliminary data from 40 states. To read the full story, click [here](#).

### **CDC Reverses Controversial Testing Guidance; Public Still Split On COVID-19 Vaccine; Las Vegas Bars To Reopen**

With the US approaching 200,000 confirmed COVID-19 deaths and worldwide infections topping 30 million, the Centers for Disease Control and Prevention is now recommending that all people who have been exposed to someone with COVID-19 should get tested, even if they aren't showing symptoms. The recommendation Friday reverses [controversial guidance the agency issued](#) at the end of August, which said that someone who was in close contact (within 6 feet) of an infected person for at least 15 minutes but doesn't have symptoms does not "necessarily need a test." To read the full story, click [here](#).

### **Trump: CDC Head Was Wrong on Coronavirus Vaccine Timeline**

President Donald Trump on Wednesday said that the head of the Centers for Disease Control and Prevention was wrong to say a vaccine wouldn't be available to the general population until later next year. "I think he made a mistake when he said that," Trump said at a press conference at the White House. "It's just incorrect information." To read the full story, click [here](#).

### **Moderna Details Vaccine Trial**

The company's chief executive officer indicated that Moderna will pursue an emergency use authorization for high-risk groups if the vaccine proves to be at least 70 percent effective. To read the full story, click [here](#).

### **Pfizer reports 'potential' of COVID-19 candidate vaccine after expanding trial to 44,000 people**

Pfizer, one of the front-runners in the quest for a COVID-19 vaccine, said its candidate vaccine looks safe, and the company expects to have data next month on how well it protects people against the coronavirus. Pfizer CEO Albert Bourla said Tuesday that he is intentionally revealing more information about the COVID-19 candidate vaccine than he would about any other

vaccine under development, because he wants the process to be open and transparent. To read the full story, click [here](#).

### **US Unveils Plan To Provide Free Coronavirus Vaccine To 'Every American'**

While the US waits for [one or more COVID-19 vaccines](#) to win approval from the Food and Drug Administration, the federal government [released an outline](#) Wednesday detailing how it intends to make those drugs available so that "every American who wants to receive a COVID-19 vaccine can receive one." The joint [report to Congress](#) (PDF) from the Department of Health and Human Services and Department of Defense indicates that vaccines will be administered "with the goal of no upfront costs to providers and no out-of-pocket cost to the vaccine recipient," meaning vaccines should be available free of charge for anyone who wants one. To read the full story, click [here](#).

### **Biden Slams Trump Over Coronavirus, Says He Would Mandate Masks**

Joe Biden said he would issue an executive order imposing a national mask mandate, if it's determined he has the legal authority to do so. And if he's not allowed to do that as president, Biden said, he would ask the nation's 50 governors at a White House meeting to do it as a coordinated campaign. To read the full story, click [here](#).

### **These Are The 10 Highest-Rated CEOs During The Coronavirus Crisis, According To Employee Reviews**

The coronavirus pandemic has undoubtedly put the leadership of many CEOs and executives to the test with forced office closures, remote meetings and, for many, no in-person interactions for the near future. While some CEOs [missed the mark](#) on providing the safety, support and flexibility their employees needed, other CEOs were able to successfully pivot during this difficult time. To read the full story, click [here](#).

### **Coronavirus Crisis Caused 40% Of Parents To Change Their Job Situation, Survey Finds**

Working parents are feeling the sting of the coronavirus pandemic — and it's hitting women especially hard. School shutdowns have left many trying to juggle work, childcare and helping their kids with distant learning. Since the crisis began, 40% of working parents have had to change their employment situation, according to a [new survey from career website FlexJobs](#). Of those polled, 25% voluntarily reduced their hours and 15% quit entirely. Of those who quit, 38% don't plan to rejoin the workforce. To read the full story, click [here](#).

### **PPP Loan Audits: What to Expect, and How to Appeal**

The Paycheck Protection Program (PPP), as established by the CARES Act and subsequent guidance found in the PPP Interim Final Rules, provides loans and loan forgiveness based on borrower's certifications and documentation provided by the borrower. Given the politically sensitive nature of the program, including a fair amount of public scrutiny and the heavy reliance on borrower-provided information, the SBA has announced that it will be auditing loans. To read the full story, click [here](#).

## **California SB 1159 Expands Presumption of Workers' Compensation Liability for COVID-19 Illness Claims**

In May, California Governor Newsom signed Executive Order N-62-20, which created a rebuttable presumption that certain employees who test positive for COVID-19 contracted the virus at work for workers' compensation purposes. With the Governor's order expiring on July 5, 2020, there has been widespread speculation as to whether the executive order would be substantively formalized into legislation and, if so, what portions of the executive order would be expanded, extended, or amended. To read the full story, click [here](#).

## **Newsom Signs Bill Requiring Businesses To Disclose Coronavirus Infections**

Supporters of the bill, AB685, say it is a crucial step in protecting many essential workers still on the job. Opponents say it is not clear when employers have to sound the alarm to workers and what exactly needs to be disclosed. To read the full story, click [here](#).

## **COVID-19 Sick Leave: Expanded and Articulated**

AB 1867 was signed into law by Governor Newsom on September 9, 2020. The purpose of the bill is to eliminate gaps in coverage so that many more employees have access to paid sick days if they are exposed to or test positive for COVID-19 in 2020. This means that the new law applies to individuals employed at companies too big to qualify under the Families First Coronavirus Relief Act ("FFCRA") passed by Congress in March and it also applies to individuals who may have been designated as essential, such as health care workers, and therefore exempt under the FFCRA. To read the full story, click [here](#).

## **Can This Smart Ceiling Fan Kill COVID-19? Independent Tests Say 'Yes'**

The Haiku UV-C from Big Ass Fans uses UV light to kill pathogens as it circulates air. Now, safety scientists say that it works against the coronavirus. To read the full story, click [here](#).

## **UVC Wands Kill Viruses. They're Also A 'Major Safety Issue,' Experts Warn**

The invisible light can kill viruses and pathogens like the one that causes COVID-19, but experts are raising alarms about the potential safety risks. To read the full story, click [here](#).

## **Fed Offers Details On Additional Bank Stress Test Triggered By COVID-19**

The Federal Reserve published hypothetical scenarios Thursday for the supplemental stress tests the largest banks must undergo in light of the uncertain economic environment. The central bank is holding the first-ever "midcycle" stress test to get a firmer grasp of banks' capital strength since onset of the coronavirus pandemic. The most recent results of the Fed's normal test were based significantly on yearend 2019 financial data. The supplemental tests will use data from this year's economic tremors. To read the full story, click [here](#).

## **CNN's Medical Expert Says 'Source' Told Him '80-90%' Of COVID Deaths Could Have Been Saved By Scrapped WH Mask Plan**

CNN chief medical correspondent Dr. Sanjay Gupta raised eyebrows on Friday over his reporting citing a "source" who said that "80 to 90 percent" of the nearly 200,000 coronavirus deaths in the US could have been saved by the Trump administration if it implemented a newly

uncovered mask distribution plan that was apparently scrapped. To read the full story, click [here](#).

### **Despite Court Order, Fresno County School Still In Session. Is Enforcement Action Next?**

Immanuel Schools in Reedley appears to be defying Fresno County officials and a Superior Court judge by continuing to provide in-person teaching on its campus. Judge D. Tyler Tharpe issued a preliminary injunction against Immanuel Schools on Tuesday, ordering them to halt in-person teaching because it violates a state coronavirus health order. But the maverick K-12 school isn't rolling over that easy. To read the full story, click [here](#).

### **Small Businesses Create Movement To Defy Health Orders If Restrictions Are Restored**

As the possibility of a move to a more restrictive tier looms over the region, some small businesses in San Diego have announced a movement to defy state health orders if more restrictions are in place – and they are encouraging others to do the same. To read the full story, click [here](#).

### **Conflicted Over California's Guidance**

Our politics may be paranoid, our society may be paralyzed, our police may be irredeemable and our skies may be on fire, but don't fear! At least we Californians can see clearly how to navigate all our crises. To read the full story, click [here](#).

### **PPP Forgiveness Applications Are Opening Up. Should You Apply?**

It's not often you get a chance to turn a loan into an outright grant, but that's potentially one of the most attractive features of the Paycheck Protection Program (PPP). Right now, banks are in the early stages of accepting PPP Loan Forgiveness applications. Fifth Third Bank started the process a couple of weeks ago. Bank of America sent emails last Friday saying that the Forgiveness Application is now available. The nations' biggest bank, Chase, hasn't started yet. Their website says they are continuing to "prepare to accept your Forgiveness requests." To read the full story, click [here](#).

### **Cal/OSHA Standards Board Requests COVID-19 Draft Emergency Regulation with Limited Opportunity for Stakeholder Input**

Cal/OSHA's Standards Board voted to grant, in part, Petition 583, which sought the creation of a COVID-19 emergency regulation for industries not already covered by the Aerosol Transmissible Diseases (ATD) Standard. Specifically, on September 17, the Board approved its staff's [proposed decision](#) which provided for three things: To read the full story, click [here](#).

### **California's Deadly Spring Suggests COVID-19 Deaths Are Undercounted**

The first five months of the COVID-19 pandemic in California rank among the deadliest in state history, deadlier than any other consecutive five-month period in at least 20 years. And the grim milestone encompasses thousands of "excess" deaths not accounted for in the State's official COVID death tally: a loss of life concentrated among Blacks, Asians and Latinos, afflicting people who experts say likely didn't get preventive medical care amid the far-reaching

shutdowns or who were wrongly excluded from the coronavirus death count. To read the full story, click [here](#).

### **How COVID-19 Connects to the Census**

A US News analysis of coronavirus cases alongside data used in the [2020 Healthiest Communities rankings](#) shows a strong link between higher self-response rates to the US Census Bureau's American Community Survey and lower coronavirus case rates at the county level. Do you want to see how that relates to you? US News has also launched new COVID-19 tracking tools, which allow you to see the impact of the novel coronavirus on your community. To read the full story, click [here](#).

### **Why SF Has The Lowest COVID-19 Death Rate Of Any Other Major City**

While many other cities such as New York experienced terrifying periods with skyrocketing cases that filled hospital beds beyond capacity, San Francisco has kept its number of cases relatively low, with some ups and downs, yet not a major surge that overwhelmed the city's healthcare system and impacted its ability to provide optimal care. To read the full story, click [here](#).

### **Dollar Jumps As Stocks Tumble; Rising COVID-19 Cases Dent Risk Appetite**

The US dollar index soared on Monday and riskier currencies fell as investors looked for safety while stock markets around the world tumbled on fears of the economic implications of rising COVID-19 cases. To read the full story, click [here](#).

### **Wall Street Tumbles Amid Bank Allegations, Rising COVID-19 Rates**

Wall Street is opening sharply lower, led by financial stocks, after a report alleged banks were profiting from illicit dealings with disreputable people and criminal networks. JPMorgan is down 3.3%, Deutsche Bank fell 7.6%. The prospect of tougher restrictions on public life in Europe to limit coronavirus cases is also weighing on stocks, particularly in the travel sector. In the US, daily COVID-19 cases are once again rising, reversing earlier progress in slowing the spread of the disease. To read the full story, click [here](#).

### **Up To 70% Of KN95 Masks Imported From China Don't Meet Filtration Standards, Study Says**

A shortage of N95 masks forced hospitals to find alternatives to protect health care workers tending COVID-19 patients. Queue the KN95 mask. As its name advertises, the KN95 mask is meant to filter out 95% of aerosol particles. However, nonprofit patient safety organization ECRI [issued a high-priority hazard alert against these masks](#) after an analysis found that up to 70% of KN95 masks imported from China did not meet these filtration standards. To read the full story, click [here](#).

### **NFL Commissioner Roger Goodell On Fining Coaches For Mask Violations: 'You Can't Let Up'**

NFL Commissioner Roger Goodell has no qualms about harshly penalizing coaches who violate the NFL's protocols mandating that they wear facemasks while roaming the sidelines. The [NFL on Monday fined three coaches](#) – San Francisco's Kyle Shanahan, Denver's Vic Fangio and

Seattle's Pete Carroll – a \$100,000 each for disregarding the policy. Additionally, their respective teams were docked \$250,000 apiece. To read the full story, click [here](#).

### **Thought No One Was Answering Calls At California's EDD? You Were Nearly Right, Report Says**

If you thought it was impossible to reach a human being about your California unemployment insurance claim in the last six months, you were nearly right, according to a recent report released by Gov. Gavin Newsom's Administration. No more than one in 1,000 callers per day have reached someone at the number the Employment Development Department has told people to call for help with their claims, leaving callers "without a statistically significant chance of being served," according to [a new report](#) from a team of government executives Newsom appointed to address problems at the department.

To read the full story, click [here](#).

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