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# Employment Law Issues

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# Current City Mandates



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# California and San Francisco State of Emergency

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- Storefront/Office Closure**
- ▶ Businesses/non-profits must cease all non-essential business operations.
  - ▶ Essential business operations include all operations for essential businesses and Minimum Basic Operations for non-essential businesses.
  - ▶ Businesses operating must create and post social distancing protocols.
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- Minimum Basic Operations**
- ▶ Minimum necessary activities to maintain and protect the value of the business's inventory and facilities; ensure security, safety, and sanitation; process payroll and employee benefits; provide for the delivery of existing inventory directly to residences or businesses; or related functions.
  - ▶ Minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.
  - ▶ Order allows businesses to continue delivery directly to customers' residences, including having employees go to store to facilitate that function.
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# Expanded Job Protection or Benefit Laws



# Sick Leave

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## ▶ San Francisco Sick Leave Law

- All businesses in San Francisco must provide their employees paid sick leave. For businesses with fewer than 10 employees, the business must provide 1 hour of paid sick leave for every 30 hours worked and employees can accrue up to at least 48 hours.
- The City has temporarily revised its Paid Sick Leave Guidelines to
  - (i) prohibit employers from requiring a doctor's note or other documentation for the use of paid sick leave during the duration of the current Local Health Emergency, and
  - (ii) expand the situations that permit an employee to use accrued sick leave, including taking time off work because the employee needs to provide care for a family member whose school ceases operation in response to a public health official's recommendation.

## ▶ Workers and Families First Program

- Provides City financial assistance to businesses and nonprofits to provide **additional** paid sick leave time to employees, over and above their existing policies once an employee has exhausted their currently available sick leave.

## ▶ Families First Coronavirus Response Act

- Exempts businesses with fewer than 50 employees from providing expanded paid sick leave
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# Workers' Compensation Benefits

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- ▶ Employees are entitled to receive worker's compensation if they are unable to perform their usual job due to being exposed to and contracting COVID-19 during the regular course of work.





# Employment Law Concepts



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# Important General Concepts

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▶ Employee vs. Independent Contractor

- Yes, AB 5 is still in effect

▶ Anti-Discrimination/Harassment/Retaliation Laws

- State and Federal law prohibit discrimination on the basis of protected classes including national origin, disability, genetic information, and age, all of which may be relevant. Although these laws typically apply only to employers with 5 or more employees, it is best practice to comply.
  - While compliance with anti-discrimination laws is complex, in the current crisis a small business should make any reduction in pay/hours or employment on a neutral basis. In addition, while modifying behaviors to promote health and safety, employers must ensure that all decisions are made without regard to protected class status.
  - Employers are also prohibited from retaliation against employees. Retaliation occurs when an employer makes an adverse employment decision against an employee, or party closely associated with the employee, for: (i) exercising rights under a statute (e.g., filing a compensation claim), (ii) internal complaints against discriminatory or unlawful conduct, (iii) complaints to government agencies, (iv) lawsuits, or (v) opposing allegedly unlawful activity
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# California Wage and Hours Laws

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## ▶ Pay cuts

- Employer must provide written notice of any change in the rate of pay 7 days prior to the change.
- Employer must pay the San Francisco minimum wage for all hours worked.

## ▶ Furloughing

- Employer must provide written notice of any change in the rate of pay 7 days prior to the change and a written change in employment status at time of furlough.
- If the employee is exempt from overtime laws, the employer must pay a full week's pay if the employee does any work in a furloughed week.
- Employers should provide the California Employment Development Department 'For Your Benefit' booklet at time of furlough notice.
- Furloughs of greater than 2 weeks could raise legal liabilities.

## ▶ Layoffs

- Employers in California must provide all compensation (final wages, any accrued vacation time, etc.) immediately at the time of employment termination.
- Employers must provide a written change of employment status at time of termination.
- For layoffs of 50 or more employees, see EDD website ([https://www.edd.ca.gov/About\\_EDD/coronavirus-2019/faqs/Warn.htm](https://www.edd.ca.gov/About_EDD/coronavirus-2019/faqs/Warn.htm)) for guidance.



# Alternatives to Layoffs

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- ▶ California Work Sharing Unemployment Insurance
  - ▶ San Francisco Hardship Emergency Loan Program (SF HELP)
  - ▶ Small Business Administration Payroll Protection Program
  - ▶ Small Business Administration Economic Injury Disaster Loan
  - ▶ Arts Loan Fund (ALF)
  - ▶ Payroll Protection Loan Forgiveness
  - ▶ CARES Act Employee Retention Credit for Employers
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# Work From Home & Data Security



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# Data Security Overview

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- ▶ Data Security Concerns
  - Network Security
  - Phishing Attacks and Spoofing
  - Malware
  - Proper Disposal of Sensitive Documents and Confidential Information
  
- ▶ Best Practices for Your Business
  - Managing Remote Workers
  - Organization Network Security
  - Data Management
  - Vendors
  
- ▶ Recommendations for Your Employees
  - E-mail
  - Passwords
  - Wi-Fi
  - Miscellaneous