

**California Department of Fair Employment and Housing  
Publishes COVID-19 FAQs****March 27, 2020****By [Deanna L. Ballesteros](#), [Jennifer L. Nutter](#), and [Brock J. Seraphin](#)**

The California Department of Fair Employment and Housing (“DFEH”) has published responses to [Frequently Asked Questions](#) (“FAQs”) and other information to provide guidance to employers regarding employment-related issues raised by the novel coronavirus (“COVID-19”). Highlights of the FAQs are summarized below. Given the increased cases of COVID-19 in the United States and California, employers should familiarize themselves with these resources and other applicable publications by federal, state, and local government agencies.

Employers are reminded that they must continue to maintain all information about employee illnesses as confidential medical records. Similarly, employers are reminded that state and federal civil rights laws prohibit discrimination and harassment in employment, including during a pandemic.

**Measuring Employees’ Body Temperature**

Generally, measuring an employee’s body temperature is considered a medical examination that can only be performed under limited circumstances. However, as a result of the COVID-19 pandemic, the DFEH has opined that employers *are permitted* to measure an employee’s body temperature for the *limited purpose* of evaluating the risk that the employee’s presence poses to others in the workplace.

This is a limited exception, and employers should exercise prudence before electing to measure an employee’s body temperature. Such determination should be made based on all facts available to the employer.

Importantly, if an employer measures an employee’s body temperature, the test should be conducted in a confidential setting and the results should *not* be recorded or published. Further, employers should remember that a heightened temperature is *not* conclusive evidence that an employee has the COVID-19 illness.

## **Responding to Employees Who Exhibit or Report COVID-19 Symptoms**

The Centers for Disease Control and Prevention has declared that employees who exhibit symptoms of COVID-19 should leave the workplace.

During this pandemic, employers may ask employees if they are experiencing COVID-19 symptoms, such as fever, chills, cough, or sore throat. Employers may tell employees who exhibit or report COVID-19 symptoms to go home.

If an employer sends an employee home for exhibiting or reporting COVID-19 symptoms and the employee is unable to work from home, pay may be due and the employer should allow the employee to use any available paid sick leave. If an employee has exhausted paid sick leave, the employee may still be eligible for other paid leave (e.g., vacation or paid time off), or job-protected unpaid leave.

Employers should also be aware that as of April 1, 2020, the federal Families First Coronavirus Response Act will go into effect and provide many employees with additional paid leave rights in connection with COVID-19. More information about this law may be found [here](#).

## **Personal Protective Equipment**

Employers may require employees to wear personal protective equipment during a pandemic, which should be provided by the employer. However, employees with a disability requiring a reasonable accommodation (e.g., non-latex gloves) should be accommodated, absent undue hardship.

## **Inquiring About Employee Absences**

Employers are permitted to ask *why* an employee has not reported to work, and this question is not considered a disability-related inquiry. If an employee discloses an illness or medical reason for being absent, employers must maintain that information as a confidential medical record.

## **Disclosing Information About an Employee Who Tests Positive for COVID-19**

An employer should not identify by name any employee who tests positive for COVID-19. If an employee tests positive for or is suspected to have COVID-19, the employer should review the most current local, state, or federal public health recommendations and take further steps at the direction of the local health department.

Employers may notify affected employees in a manner that does not reveal employees' personal health information. For example, an employer could speak with employees or send an email or other written communication stating, "[Employer] has learned that an employee at [office location] tested positive for the COVID-19 virus. The employee received positive results of this test on [date]. This email is to notify you that you have

potentially been exposed to COVID-19 and you should contact your local public health department for guidance and any possible actions to take based on individual circumstances.”

### **Leave, Reasonable Accommodations, and Medical Documentation**

The DFEH’s [FAQs](#) also discuss COVID-19 in relation to unpaid leave under the California Family Rights Act, reasonable accommodations, and medical certifications and other documentation for leaves and reasonable accommodations, as well as for releases to return to work. As these issues generally must be analyzed on an individualized basis, employers are encouraged to contact their attorneys or one of the authors of this Advisory for more information. However, the DFEH guidance notes that it may not be possible for employees to obtain documentation and advises employers to use their judgment and recommendations from public health officials to waive or postpone certification requirements in connection with leave and work-from-home requests.

### **Other Resources for Employers**

Employers should stay up to date regarding all applicable [health and safety procedures](#) and [public health recommendations](#). In addition, employers must comply with public health orders issued under the authority of a federal, state, or local entity.

### **What California Employers Should Do Now**

- Continue to review and update your COVID-19 game plans.
- Consider how to handle employees who report to work with symptoms or who have engaged in recent travel.
- Consider how paid sick time and other paid and unpaid time off benefits will be administered in light of applicable laws and agency guidance.
- Visit Epstein Becker Green’s [Coronavirus Resource Center](#) for additional information and links.

\*\*\*\*

For more information about this Advisory, please contact:

**[Deanna L. Ballesteros](#)**  
Los Angeles  
310-557-9547  
[dballesteros@ebglaw.com](mailto:dballesteros@ebglaw.com)

**[Jennifer L. Nutter](#)**  
Los Angeles  
310-557-9518  
[jnutter@ebglaw.com](mailto:jnutter@ebglaw.com)

**[Brock J. Seraphin](#)**  
Los Angeles  
310-557-9537  
[bseraphin@ebglaw.com](mailto:bseraphin@ebglaw.com)

*This document has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice. Please consult your attorneys in connection with any fact-specific*

*situation under federal law and the applicable state or local laws that may impose additional obligations on you and your company.*

**About Epstein Becker Green**

Epstein Becker & Green, P.C., is a national law firm with a primary focus on health care and life sciences; employment, labor, and workforce management; and litigation and business disputes. Founded in 1973 as an industry-focused firm, Epstein Becker Green has decades of experience serving clients in health care, financial services, retail, hospitality, and technology, among other industries, representing entities from startups to Fortune 100 companies. Operating in locations throughout the United States and supporting domestic and multinational clients, the firm's attorneys are committed to uncompromising client service and legal excellence. For more information, visit [www.ebglaw.com](http://www.ebglaw.com).

© 2020 Epstein Becker & Green, P.C.

Attorney Advertising