



GROVER WORKPLACE SOLUTIONS

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BRAVE NEW WORKPLACE

By Margaret J. Grover*

As the economy begins to reopen, both employers and employees have questions about the new work environment, appropriate safety steps, and economic impact. Although we are still in a pandemic, many people and businesses need to return to work for financial reasons. Because we continue to learn new information about the virus that causes Covid-19, guidelines and best practices change frequently. This article provides the most current information and links to information available as of June 20, 2020. Please check with the appropriate professionals for updates.

Pre-Opening Requirements for Businesses

California requires that, before reopening all facilities must take the following steps:

- Perform a detailed risk assessment and create a site-specific protection plan
- Train employees on how to limit the spread of Covid-19. This includes how to screen themselves for symptoms and when to stay home.
- Set up individual control measures and screenings
- Put disinfection protocols in place
- Establish physical distancing guidelines

Risk Assessment

The detailed risk assessment will depend upon the facility, paths of travel, common areas, space between work stations, type of work being performed, whether the facility has been closed, and a variety of other factors. Steps that most workplaces should consider include: evaluating locations and processes in which employees are likely to interact with each other, with customers, or with the public; evaluating shared spaces, such as elevators, bathrooms, break rooms, stairs, and halls to identify ability to maintain physical distance and maximum capacity; performing routine maintenance on ventilation systems including air ducts and vents; flushing the plumbing lines with running water; and checking for pest infestation.

Employee Training

Employers must provide employee training *before* employees return to work. Employees should be instructed to conduct a self-screen each day before coming to work and to stay at home if they are sick. The screen includes taking the employee's temperature, evaluating whether the employee is experiencing any of the common symptoms of Covid-19, and evaluating the employee's risk for recent exposure. San Francisco requires that every employee be given an employee screening handout, which is available here: <https://www.sfgdcp.org/wp-content/uploads/2020/05/COVID19-Personnel-ScreeningV2-Handout-FINAL-5.15.2020.pdf>. The

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training should explain that, even though an individual is not sick, she or he could transmit Covid-19. The training must emphasize that employees who are sick should not come to work.

Because some employees will come to work even if sick, in order to maintain their income, employers should explain that many types of leave will be available should they need to remain home because they are sick, may have been exposed to the Coronavirus, or need to provide care to someone who is sick or for a child whose school or child care facility has shut down.

Employees should be trained on proper use of masks, physical distancing protocols, hand washing, workplace disinfectants, and other safety precautions being implemented by the employer. The particular physical distancing requirements will be unique to the workplace. However, all employees should be instructed to maintain at least six-foot distance from others, including when in line and when shopping or collecting goods on behalf of customers, except when momentarily necessary to facilitate or accept payment and hand off items or deliver goods. San Francisco requires that each employer prepare Social Distancing Protocol, as discussed below, and distribute it to all employees.

Many industries will be required to adopt a Health and Safety Plan and distribute it to all employees. A list of the San Francisco Covid-19 Health Directives, with links to model health and safety plans where required, is available here: <https://www.sfdph.org/dph/alerts/coronavirus-health-directives.asp>. Note that there is a specific Guidance and Model Health and Safety Plan for offices, which will apply even if the business is not an industry-specific a Guidance.

Individual Control Measures

Employers may wish to conduct a second screen when the employee arrives at work, including having the employee verify that they are feeling healthy and have not been in close contact with any sick person. The employer may take the employee's temperature before the employee enters the work environment. The ideal thermometer is touchless. If a touchless thermometer is not available, a forehead scanner can be used, with disinfectant wipes between each employee. Any sign in sheets should not require the employee to disclose a specific health condition, even if Covid-19 related, because compelling an employee to share health information could violate their right of privacy.

Provide face coverings for all employees, with instructions that face coverings are to be worn at all times when at work, unless the employee is in a private office and not likely to be interrupted. A sample sign to provide information about face coverings is available online at <https://sf.gov/outreach-toolkit-coronavirus-covid-19>. Employees may bring their own face covering if they have been adequately cleaned before the shift. If any employee cannot wear a standard face covering, the employer should provide an alternate type of face covering and take steps to increase safety for all.

Assure that proper signage is posted at key locations, including entrances, stairs and elevators, one-way paths of travel, and all locations where room capacity has been reduced to maintain physical distance, such as in restrooms and break rooms.

If the work site cannot be configured to provide adequate physical distance, the employer should consider ways in which to reduce the number of people on site at any particular time. Adding shifts, having employees work alternate days, and adding new space can all be considered.

Workstations, keyboards, telephones, and other office equipment should not be shared, if possible. While some equipment, such as printers and break room appliances, cannot be provided for every employee, the employer should consider ways to limit their use. One person could be responsible for all print jobs. Employees can be encouraged to bring daily meals in coolers, rather than using the refrigerator.

Disinfectant Protocols

Before employees return to the workplace, the employer should establish a plan for cleaning and disinfecting the work environment. High touch areas and surfaces that customers touch, such as countertops, payment systems, pens, and styluses, should be disinfected regularly – ideally after every use. The employer should supply disinfecting wipes that are effective against the Covid-19 virus near all high-touch surfaces. Hand sanitizer, soap and water, and/or disinfecting wipes should be made available at or near the entrance of the facility, at checkout counters, and anywhere else where people have direct interactions

The business should establish a schedule for frequently disinfecting break rooms, bathrooms, and other common areas.

San Francisco has established cleaning and disinfecting protocols, which are available here: <https://www.sfdph.org/dph/alerts/files/COVID%E2%80%909019-Minimum-Environmental-Cleaning-Standards.pdf>

Physical Distance Requirements

Measures designed to assure that everyone can maintain appropriate physical distance should be tailored to the worksite and the business. Some common changes include: marking spaces to indicate six-foot distances; selecting doors for ingress and egress; identifying and marking paths of travel; installing plexiglass screens for receptionists and others interacting with the public; separating work stations; providing locations for documents to be transferred from one person to another without contact; and, limiting the number of individuals in common areas, such as elevators, locker rooms, and restrooms.

Each business operating in San Francisco must complete, post onsite, and follow the City's Social Distancing Protocol. A model Social Distancing Protocol, which includes a checklist with instructions and details are available at: <https://www.sfdph.org/dph/alerts/files/C19-07e-Appendix-A.pdf>. Employers must complete their own Social Distancing Protocol and distribute it to all employees.

Available Time Off

California law already provides for employer-paid sick leave as well as state programs to provide partial wage replacement for employees who are disabled or who need to provide care for family members. These programs remain available and may provide assistance to an employee who needs time off related to Covid-19. For the balance of 2020, the two additional types of leave were made available under the federal Families First Coronavirus Response Act (FFCRA).

The first is paid sick leave and the second is a modification of the leave available under the federal Family and Medical Leave Act (FMLA). This is not your ordinary FMLA, as it applies to small employers. So, even if you are not normally required to provide leave under the FMLA, you may be obligated to provide the new FMLA leave to qualified employees. Employers must put up

posters about FFCRA rights. You can download the model poster from the Department of Labor: https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf.

The FFCRA requires employers with fewer than 500 employees to provide Paid Sick Leave. Up to 2 weeks of paid sick leave is available for all employees who are unable to work, or unable to telework, for any of the following reasons:

- The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
- The employee has been advised by a health care provider (HCP) to self-quarantine due to COVID-19.
- The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
- The employee is caring for an individual who is subject to federal, state, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine.
- The employee is caring for the employee's child because the child's school or place of care is closed or is unavailable due to COVID-19 precautions.
- The employee is experiencing any other substantially similar condition specified by the Federal government.

There are caps on Paid Sick Leave under the FFCRA, which vary depending upon the reason for the employee's leave. Employees who have a COVID-19 diagnosis, who have symptoms of COVID-19, or who are subject to a quarantine order must be paid at the higher of (1) the employee's regular rate of pay or (2) the applicable state or federal minimum wage. The FFCRA does not mention local minimum wage rates, which exist in many California jurisdictions. For more highly compensated employees, the maximum rate of pay required is \$511.00 per day, or a total of \$5,100.00 for the two-week period.

FFCRA Paid Sick Leave must be provided to qualified employees immediately. You may not require an employee to use other paid leave, such as sick leave, paid time off, or vacation, before they use FFCRA Paid Sick Leave. Employers may not change existing sick leave policies to avoid the additional paid sick leave obligations under the FFCRA.

The FFCRA also expands the Family and Medical Leave Act (FMLA) to employers with fewer than 500 employees. Small businesses with fewer than 50 employees may qualify for an exemption from the requirement to provide leave due to school closings or child care unavailability if providing the leave would jeopardize the business's viability.

FMLA time off is available for all employees who have worked for at least 30 days and are unable to work, or unable to telework, for one of the following reasons:

- The employee is caring for a person who is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
- The employee is caring for the employee's child because the child's school or child care provider is closed or is unavailable due to COVID-19 precautions.

Eligible employees may take Expanded FMLA for up to 10 weeks after exhausting their FCCPA Paid Sick Leave. Employers who learn that an employee is taking time that qualified for Expanded FMLA leave should provide the FMLA Leave notice as soon as possible, to assure that all qualified

time off is included as FMLA leave. The first 10 days of Expanded FMLA leave may be without pay. The employee may elect to use vacation, paid sick leave, or other accrued paid time off. Thereafter, the employee must be paid at the higher of (1) 2/3 of the employee's regular rate of pay or (2) 2/3 of the applicable state or federal minimum wage. However, these amounts are subject to a lower cap of \$200.00 per day, or a total of \$2,000.00 for the two-week period. The employer must maintain the employee's group medical coverage during the Expanded FMLA leave. If the employee normally pays a portion of the insurance premium, the employer may require the same level of contribution during the Expanded FMLA leave.