



Thank you for attending SHRM's and Santa Barbara HRA's webcast on returning to work in California. You may now view this webcast on demand.

COVID-19 – Being a California Employer in the Times of a Pandemic: Rules, Requirements and Tips

Program Date: August 27, 2020

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Following are the Questions & Answers from the live webcast.

These responses are appropriate as of September 7, 2020.

CDC guidance and state and local orders are continuously changing, so they should be reviewed on a regular basis.

Answers provided by Jeffrey A. Dinkin, Esq., Chair of Stradling's Employment Practice Group

Question: FFCRA for "all employers under 500 employees" is confusing. Small employers under 50 are exempt, correct?

Answer: *The federal Emergency Family Medical Leave provisions applies to all employers. The slide deck discusses an exception for employers with fewer than 50 employees. It requires a determination that certain factors exist, documented by an authorized officer of the company.*

Question: Please clarify: CA EEs working for ERs of 50 EEs are NOT (or ARE?) eligible for EFMLA (under FFCRA)?

Answer: *The federal Emergency Family Medical Leave provisions applies to all employers. The slide deck discusses an exception for employers with fewer than 50 employees. It requires a determination that certain factors exist, documented by an authorized officer of the company.*

Question: FMLL Does it have to be consecutive days or can they take leave for intermittent time during a pay period? For instance a remote working parent with a remote learning student who takes multiple breaks to help their child during learning.

Answer: *The Department of Labor has issued guidance that intermittent leave requires the employer's permission. However, a federal District Court in New York issued an opinion that the DOL position is overreach, and employees have the right to use the leave intermittently. When that opinion will have effect outside of New York has not been determined.*

Question: if an employee says "I can't wear a mask, I can't breathe", you offer them to try various models/materials, and they turn this offer down, is it OK to push for a health practitioner excuse to provide them with a leave?

Answer: *This is a somewhat fact specific question. Generally, medical documentation of inability to wear a mask can be requested and then accommodation options must be explored.*

Question: For WARN: is the 6 months per employee, or 6 months total of furloughs? We have been rotating employees on furlough since March. The furlough lengths for employees have varied, but none longer than 4 months. Since we have been administering furloughs for nearly 6 months, are we subject to the WARN Act?

Answer: *It is difficult to answer this question based on the facts provided. I suggest you take another look at the slide deck on WARN.*

Question: SBCty. slide chart, link to it?

Answer: *SHRM has provided this information: <https://www.shrm.org/ResourcesAndTools/hr-topics/Pages/california-resources.aspx>*

Question: We are currently allowing 6' distanced eating in the breakroom. All are instructed to clean with disinfectant we've provided before and after use. Still not advised?

Answer: *This is a somewhat fact specific question. Generally, allowing employees to gather in a breakroom carries risk, such as those arising from ventilation concerns.*

Question: I thought the 14 days had been reduced to 10 days -- if high risk exposure and negative test.

Answer: *Please take a look at the slide deck and resources cited.*