

Napa Order, Employee Work Pass and DOL Regulation Updates

COVID-19 Employer Updates – Week of April 6, 2020:

1. Last week Napa County issued its updated Shelter in Place (“SIP”) Order in line with the other Bay Area Counties. A copy of the Order can be found here:
<https://www.countyofnapa.org/DocumentCenter/View/17112/Shelter-at-Home-Order-4-3-2020--?bidId=>.

The Order is effective from April 3, 2020 to April 30, 2020. The Order clarifies, strengthens, and extends certain terms of the prior SIP Order to increase social distancing and reduce person-to-person contact in order to further slow transmission of COVID-19. The updated Order clarifies essential businesses and activities and contains new directives:

- Requiring compliance with city and other local rules at parks and other outdoor recreation areas to improve social/physical distancing;
- Closing playgrounds and other shared recreational facilities (such as tennis courts, basketball courts, and swimming pools); and
- Requiring essential businesses to prepare, post, and implement a Social Distancing Protocol, including limiting the number of people allowed in a store at one time and providing guidance on how to control shopping lines.

The required Social Distancing Protocol must be substantially in the form attached as Appendix A to the Order. Appendix A is attached to this email for reference and we recommend using this template. The Social Distancing Protocol must be implemented by **April 6 at 11:59 pm** for all Essential Businesses at each of their facilities at which they are maintaining operations. (See paragraph 13h of the Order).

The Order also provides some clarification regarding what activities are considered essential. For example, construction is allowed including for housing and Essential Businesses but it must comply with the Construction Site Requirements to maintain social distancing and sanitation. Gardening and landscape services are also allowed in order to maintain the safety, habitability, and sanitation of a business or residence, but cannot be used solely for cosmetic purposes.

2. We have put together a template that you can provide to your employees if you are an Essential Business and have employees that still need to come into work, either for a shift or to pick up supplies, in the event they are asked why they are not sheltering in place.
3. The Department of Labor has issued its final regulations regarding the expanded paid Family and Medical Leave (EFMLA) and paid emergency sick leave (EPSL) under the Families First Coronavirus Response Act (FFCRA). The rule is referred to as a “temporary” rule because it expires on December 31, 2020. You can access and download the full final version of the rule on the DOL website, which also has links to a free webinar regarding the regulations as well as slides that you can download and view:
<https://www.dol.gov/agencies/whd/ffcra>.

The regulations mainly confirmed the information already contained in the DOL's expanded FAQs that we sent out previously, however, there are some key clarifications to note. If you have specific questions regarding the regulations and how it affects your employees please let us know.

- a. The DOL clarified that the term "Son or Daughter" has the same meaning as is used in the regular FMLA. Accordingly, the term means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is under 18 years of age; or 18 years of age or older who is incapable of self-care because of a mental or physical disability.
- b. Section 826.100 provides greater detail on the documentation that is required for employees who need to take leave under the FFRCA, which is consistent with the guidance already provided from the IRS. In the case of leave that is requested to care for an employee's son or daughter whose school is closed due to COVID-19, the regulations require an employee to provide: "(1) The name of the Son or Daughter being cared for; (2) The name of the School, Place of Care, or Child Care Provider that has closed or become unavailable; and (3) A representation that no other suitable person will be caring for the Son or Daughter during the period for which the Employee takes Paid Sick Leave or Expanded Family and Medical Leave." Employers are required to keep copies of all documentation for four years.

If an employer is already required to provide regular FMLA leave (i.e. employers with more than 50 employees), its employees are only entitled to 12-weeks of FMLA leave total in a 12-month period (as determined by the employer). That means if an employee has already taken FMLA leave in the 12 month period, they can only take EFMLA leave for the remaining time available in the 12-month period and they do not get an additional 12-weeks of EFMLA leave.

Appendix A: Social Distancing Protocol

Business name: Click or tap here to enter text.

Facility Address: Click or tap here to enter text.

Approximate gross square footage of space open to the public: Click or tap here to enter text.

Businesses must implement all applicable measures listed below, and be prepared to explain why any measure that is not implemented is inapplicable to the business.

Signage:

Signage at each public entrance of the facility to inform all employees and customers that they should: avoid entering the facility if they have a cough or fever; maintain a minimum six-foot distance from one another; sneeze and cough into a cloth or tissue or, if not available, into one's elbow; and not shake hands or engage in any unnecessary physical contact.

Signage posting a copy of the Social Distancing Protocol at each public entrance to the facility.

Measures To Protect Employee Health (check all that apply to the facility):

Everyone who can carry out their work duties from home has been directed to do so.

All employees have been told not to come to work if sick.

Symptom checks are being conducted before employees may enter the work space.

All desks or individual work stations are separated by at least six feet.

Break rooms, bathrooms, and other common areas are being disinfected frequently, on the following schedule:

Break rooms:

Bathrooms:

Other (Click or tap here to enter text.): Click or tap here to enter text.

Disinfectant and related supplies are available to all employees at the following location(s): Click or tap here to enter text.

Hand sanitizer effective against COVID-19 is available to all employees at the following location(s): Click or tap here to enter text.

Soap and water are available to all employees at the following location(s): Click or tap here to enter text.

Copies of this Protocol have been distributed to all employees.

Optional—Describe other measures: Click or tap here to enter text.

Measures To Prevent Crowds From Gathering (check all that apply to the facility):

Limit the number of customers in the store at any one time to Click or tap here to enter text.[insert maximum number here], which allows for customers and employees to easily maintain at least six-foot distance from one another at all practicable times.

Post an employee at the door to ensure that the maximum number of customers in the facility set forth above is not exceeded.

Placing per-person limits on goods that are selling out quickly to reduce crowds and lines. Explain: Click or tap here to enter text.

Optional—Describe other measures: [Click or tap here to enter text.](#)

Measures To Keep People At Least Six Feet Apart (check all that apply to the facility)

- Placing signs outside the store reminding people to be at least six feet apart, including when in line.
- Placing tape or other markings at least six feet apart in customer line areas inside the store and on sidewalks at public entrances with signs directing customers to use the markings to maintain distance.
- Separate order areas from delivery areas to prevent customers from gathering.
- All employees have been instructed to maintain at least six feet distance from customers and from each other, except employees may momentarily come closer when necessary to accept payment, deliver goods or services, or as otherwise necessary.
- Optional—Describe other measures: [Click or tap here to enter text.](#)

Measures To Prevent Unnecessary Contact (check all that apply to the facility):

- Preventing people from self-serving any items that are food-related.
 - Lids for cups and food-bar type items are provided by staff; not to customers to grab.
 - Bulk-item food bins are not available for customer self-service use.
- Not permitting customers to bring their own bags, mugs, or other reusable items from home.
- Providing for contactless payment systems or, if not feasible, sanitizing payment systems regularly.

Describe:

Optional—Describe other measures (e.g. providing senior-only hours):

Measures To Increase Sanitization (check all that apply to the facility):

- Disinfecting wipes that are effective against COVID-19 are available near shopping carts and shopping baskets.
- Employee(s) assigned to disinfect carts and baskets regularly.
- Hand sanitizer, soap and water, or effective disinfectant is available to the public at or near the entrance of the facility, at checkout counters, and anywhere else inside the store or immediately outside where people have direct interactions.
- Disinfecting all payment portals, pens, and styluses after each use.
- Disinfecting all high-contact surfaces frequently.
- Optional—Describe other measures:

* Any additional measures not included here should be listed on separate pages, which the business should attach to this document.

You may contact the following person with any questions or comments about this protocol:

Name:

Phone number:

To Whom It May Concern:

This letter is intended to notify you that [Insert name of employee] is an employee of [Insert Company Name] and is actively working for us. We are a [insert the type of business that you are], and as such we are considered an Essential Business under the Governor's state-wide Stay at Home Order and the County's Shelter in Place Order.

We have taken steps to ensure that employees who can work remotely are doing so from home and that those that need to come into work, either for a shift or to pick up supplies, are provided with a work environment that complies with our Social Distancing Protocol.

For any questions about this letter or our Company's status, please contact [Insert the name or names of contact person and phone number(s)].

Regards,