

California Department of Fair Employment and Housing Issues COVID-19 FAQs

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With the rapid onset of the COVID-19 pandemic, California employers have endeavored to ensure the health and safety of their workforces while at the same time heeding the anti-discrimination provisions of the California Fair Employment and Housing Act (FEHA). Addressing a number of unique issues arising out of the current crises, on March 20, 2020, the California Department of Fair Employment and Housing (DFEH) issued answers to frequently asked questions (FAQs) about the COVID-19 pandemic. The FAQs address compliance with both the anti-discrimination provisions in FEHA as well as leave of absence rights found in the California Family Rights Act (CFRA).



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In publishing the FAQs, the DFEH acknowledges the dynamic, ever-changing nature of both the pandemic and state and local responses to the COVID-19 crisis. The FAQs encourage employers to become familiar with state and federal publications on the topic and use reasonable judgment in the workplace in the absence of clearly defined lines.

Avoiding Racial or National Origin Profiling

The DFEH cautions employers not to succumb to stereotypical, discriminatory thinking relating to the global origins and spread of the virus. The FAQs remind employers that prohibitions against discrimination and harassment in employment because of race or national origin still apply, including during a pandemic. As an example, the DFEH notes “it is unlawful for an employer to refuse to hire, segregate, or send employees home because of their actual or perceived race or national origin, or because of their association (including marriage or co-habitation) with someone based on race or nation origin.” Further, employers must take reasonable steps to prevent and promptly correct any such discriminatory or harassing conduct in the workplace.

Sending Employees Home

The DFEH validates that pursuant to [guidance issued by the Centers for Disease Control and Prevention \(CDC\)](#), employers may ask employees who are exhibiting COVID-19 symptoms to leave the workplace. The DFEH reiterates that such employees may be entitled to use accrued paid sick leave, paid time off (PTO), vacation time, or job-protected unpaid leave.

Taking Temperatures

Many employers have inquired whether it is permissible to screen employees for symptoms of COVID-19, including [taking temperatures to detect fevers](#). The FAQs state that during a pandemic, “employers may measure employees’ body temperature for the limited purpose of evaluating the risk that employee’s presence poses to others in the workplace as a result of the COVID-19 pandemic.” Nonetheless, employers must still be mindful that temperature checks not be instituted in a discriminatory fashion. As such, if employers wish to impose temperature checks, a best practice would be to impose checks on *all* employees

reporting to work rather than limiting checks to certain groups of employees. Further, state law requires that any information about an employee illness be maintained as a confidential medical record by the employer.

Asking About Absences

The FAQ affirms that employers may ask employees why they have not reported to work, if they suspect it is for a medical reason. Employers may also ask employees if they are experiencing COVID-19 symptoms such as fever, chills, a cough, or sore throat. This will not be deemed to be a prohibited disability-related inquiry. Importantly, the FAQs do not state that an employer may ask for a doctor's note in connection with such an inquiry. As with temperature checks, any information obtained from an employee about his or her illness must be kept as a confidential medical record.

Warnings About Workplace Illness

The FAQs makes clear that employers may not reveal the identity of an employee who has been quarantined, tests positive for COVID-19, or has come in contact with a COVID-19 positive individual. However, employers may “notify affected employees in a way that does not reveal the personal health-related information of an employee.” The FAQs provides a sample communication for employers to use.

Protected Leaves

The FAQ expressly states that employees may be entitled to job-protected, unpaid leave under the CFRA. The FAQs state, “COVID-19 will qualify as a serious health condition if it results in inpatient care or continuing treatment or supervision by a health care provider. It may also qualify as a serious health condition if it leads to conditions such as pneumonia.” Employees must still meet other threshold CFRA eligibility requirements in order to qualify for leave. However, the FAQs make clear that it expects employers to relax or even “waive certification requirements when considering and granting leave requests.” Given healthcare providers are addressing urgent patient needs, it is likely that there will be delays in obtaining less urgent items such as medical certifications.

Reference to CDC Standards

The DFEH publication relies heavily on [recently published CDC guidance](#). Employers should therefore keep up to speed on the on the latest public health recommendations from the CDC, in addition to guidance from the state of California and various county Departments of Health.

The FAQs address a number of other topics, which California employers may want to review to minimize the risk that while protecting the health and safety of their workforces, they do not inadvertently violate FEHA.

Ogletree Deakins will continue to monitor and report on developments with respect to the COVID-19 pandemic and will post updates in the firm's [Coronavirus \(COVID-19\) Resource Center](#) as additional information becomes available. Critical information for employers is also available via the firm's [webinar programs](#).

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