

# HEALTH AND SAFETY DURING COVID-19

## Employers' Legal Responsibilities for Maintaining a Safe Workplace



- COVID-19 has been recognized as a hazard in most CA workplaces.
- Title 8 of the California Code of Regulations section 3203 requires CA employers to have an Injury and Illness Prevention Plan (IIPP) to protect workers from workplace hazards.
- An effective IIPP must involve all employees and managers, and ensure that there is (1) responsibility, (2) compliance, (3) communication without retaliation, (4) hazard assessment, (5) accident/exposure investigation, (6) hazard correction, (7) training and instruction, and (8) recordkeeping.
- Effective July 1, 2020, CA employers are required to provide employees with a copy of their IIPP upon request.

## Cal/OSHA Guidance on Workplace Safety and PPE



- Cal/OSHA's guidance on requirements to protect workers includes:
  - Encouraging sick employees to stay home
  - Reorganizing the workspace and installing physical barriers such as a plexiglass screen to protect workers in frequent interaction with the public
  - Enforcing a social distancing protocol - 6 ft apart
  - Routine cleaning and disinfecting of surfaces with EPA-approved disinfectants
  - Providing workers with cloth face covers or encouraging workers to use their own face covers
- Employers are required to provide and pay for PPE if the PPE is necessary to protect workers from workplace hazards while performing their specific job duties
- The type of PPE that employers are required to provide varies based on industry and job duties. Currently, surgical masks and N-95 respirators are recommended for just healthcare workers and first responders. Disposable gloves are recommended for workers handling items touched by the public.

If you have any questions about your rights, please call ALC at (415) 896-1701 to schedule a phone consult.

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## Right to Refuse Unsafe Work



- Under CA Labor Code section 6311, employees have a legal right not to be laid off or discharged for refusing to perform any work that is in violation of occupational health and safety standards and that would create a "real and apparent hazard to the employee or his or her fellow employees."
- However, application of this statute in practice might be tricky as it is not entirely clear what constitutes a "real and apparent hazard" during the COVID-19 pandemic.
- If workers encounter any health and safety issues in the workplace, it is important to document as much information as possible and raise the concerns with management.

## Organize and Complain Without Retaliation



- **Workplace Organizing:** The most efficient way to resolve any health and safety issues in the workplace is to raise your concerns directly with the employer. Workers can band together and put pressure on the employer by raising concerns collectively - there is strength in numbers! Document and keep a record of any complaints that you raise.
- **Right to Complain Without Retaliation:** Employees are protected against retaliation for raising concerns about health and safety in the workplace.
- It is illegal for employers to retaliate against workers for raising health and safety by terminating or suspending their employment, demoting them to a lower position, reducing their hours or pay, subjecting them to disciplinary action, or engaging in unfair immigration-related practices.

## How to Enforce Health and Safety Rights



- **File a Health/Safety Complaint with Cal/OSHA:** You can file a health and safety complaint with Cal/OSHA by phone or in writing (preferred). You do not need to name a specific law that has been violated. The names of claimants are kept confidential, but having your name on the complaint can act as a shield to show retaliation in the future.
- **If You Experience Retaliation:** You can file a retaliation complaint with the Retaliation Complaint Investigation Unit (RCI) at the CA Labor Commissioner's Office within 6 months of the adverse action. If you engaged in concerted activity by raising health and safety concerns on behalf of one or more other workers, you can also file an unfair labor practice charge with the NLRB within 180 days of when the retaliation occurred.

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