

Presentation for San Luis Obispo County Women Lawyers Association

May 5, 2021

“Back to Business as Usual—Or, Is It?”

Takeaways and resources

- What things do I need to consider if employees will be returning to the workplace?
 - Communication
 - The employees most satisfied with employer responses to changing work environment are those who felt the employer communicated with them before, during and after the changes were implemented
 - If there are choices, consider involving employees in the decision-making (all or just those interested)
 - Policies
 - Think about what contacts your employees may have with each other and with the public that could cause infection
 - Draft policies to anticipate the most likely sources of exposure for your employees
 - Put policies in place concerning employee illness
 - Consider involving employees in policy-making to encourage compliance
 - Documentation
 - Familiarize yourself with the reopening rules in your county
 - Most counties also incorporate state and federal guidance, but some have additional requirements (example: Santa Clara County) so start with the county
 - Some cities also have their own rules (example: San Francisco, San Diego) so check that, too
 - SLO County website:
<https://www.emergencyslo.org/en/currentrestrictions.aspx>
- What things do I need to consider if remote work will continue to be available?
 - Criteria for deciding who can and who can't work remotely
 - Adopt neutral, objective policies and apply consistently
 - Avoid discrimination
 - Think about and document the issues that led to your decision
 - Consider what industry—there are some special rules for certain sectors
- What is an IIPP and why do I need to care?
 - Illness & Injury Prevention Program
 - Has been required for all California employers since 1991
 - Fewer than 10 employees?
 - Can be oral, but if you're going to go to the trouble of adopting policies, why not put them in writing?
 - 8 Cal Code of Regulations §3203

- (a) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum:
 - (1) Identify the person or persons with authority and responsibility for implementing the Program.
 - (2) Include a system for ensuring that employees comply with safe and healthy work practices. Substantial compliance with this provision includes recognition of employees who follow safe and healthful work practices, training and retraining programs, disciplinary actions, or any other such means that ensures employee compliance with safe and healthful work practices.
 - (3) Include a system for communicating with employees in a form readily understandable by all affected employees on matters relating to occupational safety and health, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal. Substantial compliance with this provision includes meetings, training programs, posting, written communications, a system of anonymous notification by employees about hazards, labor/management safety and health committees, or any other means that ensures communication with employees.
- Exception: Employers having fewer than 10 employees shall be permitted to communicate to and instruct employees orally in general safe work practices with specific instructions with respect to hazards unique to the employees' job assignments as compliance with subsection (a)(3).
- (4) Include procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices. Inspections shall be made to identify and evaluate hazards:
- Templates
 - <http://dir.ca.gov>
 - These may require membership to access content:
 - State Compensation Insurance Fund
[https://content.statefundca.com/safety/IIPP.asp#:~:text=In%20California%2C%20every%20employer%20is,illness%20Preventio n%20Program%20\(IIPP\)%3A](https://content.statefundca.com/safety/IIPP.asp#:~:text=In%20California%2C%20every%20employer%20is,illness%20Preventio n%20Program%20(IIPP)%3A)
 - Industry organizations (e.g., California Restaurant Association)
 - Society for Human Resources Management
<https://www.shrm.org/>
 - Cal Chamber of Commerce

- <https://hrcalifornia.calchamber.com/hr-library/workplace-safety/creating-health-safety-plan/injury-and-illness-prevention-program>
 - Other sources of content:
 - Universities
 - <https://ehs.usc.edu/occhealth/injury-prevention/iipp/iipp-template/>
 - Try googling “California IIPP template”
 - Cal-OSHA only cares about manufacturing facilities and construction sites, right?
 - WRONG
 - <https://www.dir.ca.gov/dosh/coronavirus/ETS.html>
 - COVID-19 Prevention – Emergency Temporary Standards – *Posted* December 1, 2020 (8CCR3205)
 - 3205 COVID-19 Prevention
 - Applies to all CA employers except those with one employee w/no contact with others
 - 3205.1 Multiple COVID-19 Infections and COVID-19 Outbreaks
 - 3205.2 Major COVID-19 Outbreaks
 - 3205.3 COVID-19 Prevention in Employer-Provided Housing
 - 3205.4 COVID-19 Prevention in Employer-Provided Transportation to and from Work
 - Can I mandate vaccination? Should I? What do I do if someone refuses?
 - Employers can lawfully mandate vaccination as a condition of employment
 - Per the EEOC, vaccination may be a condition of employment,
 - Exception is made for
 - Medical contraindication
 - Sincere religious belief
 - See EEOC Q&A: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>
 - Options
 - Consider requesting employees to voluntarily vaccinate
 - Employers may provide incentives
 - State law requires employer to provide paid time off for obtaining vaccination and for vaccine-related illness
 - Up to 80 hours
 - In addition to statutory paid sick leave benefits (at least 3 days or 24 hours)
 - Apply the COVID related leave first if eligible
 - May be reimbursed through payroll or income tax credit—consult a tax professional for guidance

- If you do not obtain full compliance with a voluntary program, be sure to allow a reasonable time for compliance before imposing consequences
 - Communicate all expectations
 - If possible, involve employees in policy-making
- Consider employee privacy when handling medical information such as test results and vaccine information
 - Must be kept separate from personnel files and available only on a need to know basis
- What do I do if an employee gets COVID or gets sick from the vaccine?
 - Follow the rules
 - Cal-OSHA Emergency temporary standards
 - If other employees exposed, you only have 24 hours to notify them
 - May require you to advise county public health department
 - Check county rules (start here—at least in SLO)
 - Many counties incorporate state rules
 - State Rules
 - Check for city rules (San Francisco and San Diego, among others, have additional requirements)

Attachments:

Mandatory posters:

- 2021 COVID-19 Supplemental PSL poster
- Retaliation COVID Flyer

Optional posters:

- Distance plus face covering poster
- Face coverings poster