CMA COVID-19 TOOLKIT FOR PHYSICIAN EMPLOYERS

As the COVID-19 pandemic continues to have a profound economic impact nationwide, many physicians are facing important questions related to their practices and employment. Physician employers especially must be ready to address evolving circumstances related to the health and safety of their personnel. Many employers must contend with the prospect of reducing workforces, closing businesses and adjusting to new working environments in response to the statewide stay-at-home order. In recent weeks, new laws have been quickly enacted at the federal, state, county and city level that have expanded unemployment benefits, sick leave provisions, and family medical leave laws to help both employers and employees affected by this public health crisis. CMA has developed this resource to address rapidly evolving personnel and other employment-related issues.

NOTE: Substantive changes from our last update will be highlighted in orange.

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NOTE: While this guide covers frequently asked questions about the laws governing physician employers, it is not a substitute for a lawyer. This guide does not constitute legal advice to any individual and the use of or reliance on the information contained in this guide does not establish an attorney-client relationship. For a legal opinion concerning your specific situation, please consult your personal attorney.

Effect of California's Stay at Home Order on Physician Employers

On March 19, 2020, Governor Newsom issued Executive Order N-33-20, directing all residents to immediately stay at home in order to protect public health, except as needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as the State Public Health Officer may designate as critical to protect the health and well-being of all Californians.

Health care workers are among the essential groups of workers identified by the State Public Health Officer as exempt from Gov. Newsom’s statewide order. The list of essential health care workers is expansive and includes, among others, physicians, nurses and assistants, pharmacists, and physical and occupational therapists and assistants. Please visit the link above for the complete list of essential workers who are exempt from Executive Order N-33-20.

Q Can an employee refuse to come to work because of fear of infection?

A It should be noted that this situation only applies to an employee for a business considered essential under the orders, as essential business, such as restaurants, healthcare and grocery stores. Any non-essential business cannot legally operate under the current orders. However, employees can generally refuse to work if they believe they are in imminent danger. Section 13(a) of the Occupational Safety and Health Act (OSHA) defines “imminent danger” to include “any conditions or practices in any place of employment which are such that a danger exists which can reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act.” OSHA further clarifies “imminent danger” to exist in situations where “threat of death or serious physical harm,” or “a reasonable expectation that toxic substances or other health hazards are present, and exposure to them will shorten life or cause substantial reduction in physical or mental efficiency.”

Cal/OSHA also provides protection to employees who refuse to work under hazardous conditions. Generally, it is illegal for an employer to retaliate against an employee who refuses to perform hazardous duties, if performing the work would violate a Cal/OSHA health or safety regulation, and the violation would create a “real and apparent hazard.

While neither OSHA nor Cal/OSHA have addressed the existence of “imminent danger” or hazardous duties as they pertain to health care workers’ exposure to COVID-19, OSHA has classified health care workers and support staff as having “very high” to “high” exposure risk to the disease. Thus, an employer’s failure to implement safety control measures, or abide by state and federal standards designed to protect health care workers against transmission of infectious agents (such as failure to provide appropriate PPE), may create a situation that rises to the threshold of an “imminent danger”
or "real and apparent hazard." Because the duties of most health care workers necessarily involve potential exposure to COVID-19, employers should strive to ensure that they adhere to all workplace health and safety regulations and address the concerns of individual employees.

If an employee expresses reservations about coming to work, the employer must evaluate the danger and the existence of the risk to the employee. Given that an employee may refuse to show up for work despite an employer’s opinion that the risk does not justify the employee’s refusal, care should be taken from disciplining the employee. It is possible for an employer to face a retaliation and/or wrongful termination if the employer disciplines or fires an employee who refuses to show up for fear of contracting COVID-19.

It should be noted that this guidance is general, and employers must continually review the facts and circumstances in their workplace before determining whether it is permissible for employees to refuse to work.

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**Special Considerations for Remote Workers**

To mitigate exposure to and transmission of COVID-19, many employers, including physician practices, have been able to move certain operations and employees to remote work environments. While this allows practice operations to continue, employers need to be aware of several key considerations with regard to remote employees.

**Hourly/Non-Exempt Employees**

Non-exempt (hourly) employees generally are entitled to compensation for actual time worked, whether the work is done in the office or elsewhere. Any employee who is permitted to work remotely, must be told what the expectations are with respect to work product and any supervision. A signed policy indicating the types of activities that require supervisor approval and the company’s expectation for recording any time spent on such activities is something employers should seriously consider. Employers should also consult applicable company policies, employment contracts, and collective bargaining agreements for potential contractual obligations to pay an employee during periods where the employee does not report to work.

**Exempt Employees**

Federal and state law requires that exempt employees who perform any work during a week must be paid their full weekly salary, even if they cannot work the full week because their employer failed to make work available. However, if an exempt employee performs no work at all during a week, they may have their weekly salary reduced.

Employers cannot reduce an exempt employee’s salary for absences of less than a full day for personal reasons or for sickness. If an exempt employee works any portion of a day, there can be no deduction from salary for a partial day absence for personal or medical reasons.
Meal Breaks and Rest Periods

If a nonexempt employee works remotely, the employer must ensure that they must comply with state laws regarding meal breaks and rest periods. Employers should clearly communicate to their employees working remotely that normal policies regarding meal breaks and rest periods still apply.

Reimbursement of Expenses

All employees working remotely will need access to computers, telephones and the means to connect via the internet and cellular service. Generally, the California Labor Code §2802 requires employers to reimburse employees for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” The cases interpreting this provision make clear that employees are entitled to be reimbursed for the “actual” expenses.

An employee’s use of a personal cell phone and internet directly related to their employment falls under this provision. Similarly, the employee may use their personal computer, routers, modems, and other equipment to communicate and work remotely. Thus, employers should reimburse their employees for a reasonable percentage of their cell phone, internet service bills, and wear and tear for any equipment for work-related expenses. Because it is difficult to determine actual expenses, employers generally determine (with the agreement of the employee, if possible) to reimburse a reasonable flat rate for those expenses. Notably, California courts have said that employers may be required to reimburse employees for expenses, such as a portion of a personal cell phone bill, even if the employee was already planning to pay for those services for their personal use.

Q How do employers calculate "reasonable expenses" for remote workers? Do employees need authorization before incurring expenses?

A The California Labor Code requires employers to reimburse remote workers for reasonable expenses but does not specify how those expenses should be calculated or how the employee should be reimbursed. An employer may, for instance, pay employees a fixed amount via a stipend. However, the employer’s policy should also allow an employee to submit for reimbursement of expenses in excess of the stipend amount. The employer may then decide whether to pay additional reimbursement or decline the claim. It should be noted that the law requires the employer to reimburse for actual costs, and this right cannot be waived. Therefore, even if an employee agrees to an amount, the employee has a right to seek more if the actual amount is more than any amount agreed between the employee and employer.

Employers should endeavor to create a reimbursement policy that explains what expenses are reimbursable, and the process for obtaining reimbursement. Such policies can provide that reimbursement is subject to approval. However, California Labor Code §2802 says that an employee may not enter into any contract or waive their right to reimbursement of expenses.
State and Federal Financial Supports for Employees and Employers

As a result of a variety of factors - postponement of non-essential visits and procedures, lack of personal protective equipment (PPE) and other supplies, cancellation of appointments due to patient isolation and concerns about COVID-19 transmission, and medical office staff being self-isolated/quarantined or unable to come to work because of childcare issues – many physician offices are considering reducing staff, reducing hours, or closing altogether while they navigate the COVID-19 pandemic. This section of the guide discusses the income supports available to employees who are laid off, furloughed, or whose hours are reduced as well as some of the financial supports and other programs available to employers.

Unemployment Benefits for Employees

State and federal agencies have issued guidance for employees who may be eligible for unemployment benefits due to COVID-19. This section provides an overview of the criteria for unemployment benefits as the result of a COVID-19-related job loss or reduction in hours as well as the scope of benefits available.

California's Unemployment Benefits Program

The California Employment Development Department (EDD) encourages employees to apply for Unemployment Insurance (UI) benefits if they are unemployed or had their hours reduced, which includes, but is not limited to, the following circumstances:

+ Employees who are furloughed or experience reduced work hours due to the quarantine.
+ Employees who were separated (e.g., terminated, laid off, place of employment shut down, etc.) from their employer during the quarantine.
+ Employees who are subject to a quarantine required by a medical professional or state or local health officer.
+ Employees who are now eligible for UI benefits under recent federal legislation.

Generally, under California law, employees are eligible for benefits if they have enough earnings over the past 12-18 months and meet other eligibility criteria.

Employees who wish to file for UI benefits should visit the EDD's online portal to begin the process. Given the unprecedented number of UI claims in recent weeks, the EDD recommends that applicants file their claims online.

Pursuant to the Governor’s March 12, 2020 Executive Order, the state has removed the one-week waiting period for unemployment and disability insurance for Californians who lose work as a result of the COVID-19 outbreak. The EDD will process and issue payments within a few weeks of receiving a claim.
The Coronavirus, Aid, Relief, and Economic Security (CARES) Act

Signed into law on March 27, 2020, the CARES Act provides the following expanded UI benefits to workers impacted by the COVID-19 pandemic:

- Extends benefits to individuals who are not ordinarily eligible for regular UI benefits, including self-employed workers, independent contractors, those with limited work history and those who have exhausted their state UI compensation.
- Extends UI benefits from 26 weeks to 39 weeks and provides for an additional $600 per week benefit to each recipient of UI benefits for up to 4 months (expires July 31, 2020).
- Provides an additional 13 weeks of UI benefits to those who are still unemployed after their state UI benefits have been exhausted (expires on December 31, 2020). In California, this extends UI benefits from 26 weeks to 39 weeks for eligible workers. This benefit is generally available to those who are able and available to work and are actively seeking work.

“Covered individuals” under the CARES Act include those who provide self-certification that they are able and available to work, but are unemployed or partially unemployed because:

- They have been diagnosed with COVID-19 or have symptoms of COVID-19 and are seeking a diagnosis;
- A member of their household has been diagnosed with COVID-19;
- They are providing care for a family or household member who has been diagnosed with COVID-19;
- They have a child or member of their household for whom they have primary caregiving responsibility, who cannot attend school or another facility that is closed as a direct result of COVID-19, and the child’s or household member’s attendance at such school or facility is required for them to work;
- They cannot reach their place of employment because of a quarantine imposed as a direct result of COVID-19;
- They cannot reach their place of employment because they have been advised by a health care provider to self-quarantine due to COVID-19;
- They were scheduled to begin employment and do not currently have a job or they are unable to reach the job as a direct result of COVID-19;
- They have become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- They had to quit their job as a direct result of COVID-19;
- Their place of employment is closed as a direct result of COVID-19; or
- They meet any additional criteria established by the Secretary of Labor for assistance.
Individuals are not eligible for UI benefits under the CARES Act if they are able to work remotely, or are already receiving other paid leave benefits, regardless if they meet any of the qualifications listed above.

Under the CARES Act, states have the opportunity to enter into an agreement with the federal government in which the state would receive funding for “short term compensation” programs, which would subsidize employees who experience reduced work hours due to COVID-19, but have not been laid off.

Currently, the EDD is awaiting further guidance from the U.S. Department of Labor in order to implement the various provisions for California residents. For the latest updates, please visit the EDD’s COVID-19 website. CMA will continue to monitor the situation and provide further guidance when available.

**Q** Are physicians eligible for unemployment benefits?

**A** Yes. Employed physicians who are facing layoffs or reduction in hours would be eligible for unemployment benefits if they meet the criteria discussed above. Additionally, under the CARES Act, self-employed individuals, including physicians, who would not normally be able to receive UI benefits are now eligible, subject to the state cap on wage replacement (in addition to the temporary $600 per week benefit under the CARES Act).

**Q** Will getting paid for telehealth or other consults impact a physician's eligibility for unemployment benefits?

**A** Potentially, yes. Generally, individuals who are able to work remotely are not eligible for UI benefits, even under the expanded eligibility criteria under the CARES Act. However, health care workers who experience reduced work hours due to COVID-19 may be eligible for partial benefits, even if they are able to continue providing some care via telehealth. Federal and state agencies have not weighed in on this exact scenario, and it is likely that such UI benefits claims will be considered by the EDD on a case-by-case basis.

**Supports for Employers**

This section provides a brief overview of the state and federal programs available to physicians seeking to keep their practices open and their staff employed during the COVID-19 pandemic. CMA’s Toolkit, "Financial Assistance for Medical Practices During the COVID-19 Pandemic," contains detailed information about the federal programs discussed here.

**California's Unemployment Insurance Work Sharing Program**

Physician employers experiencing a slowdown in their practices as a result of the COVID-19 impact on the economy may apply for the Unemployment Insurance (UI) Work Sharing Program. This program allows employers to seek an alternative to layoffs — retaining their trained employees by reducing their hours and wages that can be partially offset with UI benefits. Workers of employers who are approved to participate in the Work Sharing Program receive the percentage of their weekly UI benefit amount based on the percentage of hours and wages reduced, not to exceed 60 percent.
Employers interested in utilizing the Work Sharing Program can visit the EDD's website to learn more about its benefits for employers and employees, and how to apply.

**Federal Paycheck Protection Program**

Part of the Coronavirus Aid, Relief and Economic Security (CARES) Act enacted on March 27, 2020, the Paycheck Protection Program is a new forgivable loan program to help small employers pay their expenses and retain their employees during the COVID-19 pandemic.

The program provides small businesses (500 or fewer employees) with funds of up to 8 weeks of payroll costs, including benefits, and can also be used to cover rent, utilities, and other specified expenses. Payments on Paycheck Protection loans are deferred for 6 months and will be forgiven if the employer maintains its workforce for the period of February 15, 2020 through June 30, 2020. If the employer reduces its workforce during the covered period relative to the same period last year, or reduces the salary or wages paid to an employee by more than 25%, the loan forgiveness will drop by the same percentage. If an employer has already laid off employees or reduced their salaries, an employer can avoid any reduction by rehiring employees or restoring their salaries. If the employer rehires all employees laid off since February 15, 2020, or increases employees’ previously reduced wages by June 30, 2020, it would potentially be eligible for full forgiveness.

For more information about the Paycheck Protection Program, see the U.S. Department of Treasury's fact sheet. To apply for a loan, visit the Small Business Administration's website.

**Employee Retention Tax Credit**

The CARES Act offers tax credits to employers that have seen their operations closed or partially closed during any quarter in 2020 because of COVID-19 or who have experienced a significant decline in gross receipts during 2020.

The credit is equal to 50 percent of qualified wages (including health plan expenses) that an eligible employer paid to an employee in a calendar quarter between March 13, 2020 and December 31, 2020. The maximum amount of wages is $10,000 per employee, so the maximum credit is $5,000 per employee. Qualifying employers with 100 employees or fewer can take a credit for all qualifying wages. Employers with more than 100 employees can also take a credit, but only for wages paid to employees who are not working because of a closure or decline in gross receipts.

For more information about the Employee Retention Credit, visit the Internal Revenue Service's website.

**Practices Facing Closure**

Given the loss of demand for certain services and challenges many practices are facing during the COVID-19 pandemic, CMA understands that a number are considering closing for some period. The section of the toolkit discusses alternatives to practice closure, obligations to existing patients in the event of closure, and the requirement to notify employees in prior to layoffs.
Alternatives to Closing a Practice

Practices facing a reduced demand for certain medical treatments and services or challenges with office staffing as the result of the COVID-19 pandemic, may find alternatives to office closure in the resources discussed below.

**TELEHEALTH.** Physician employers should also consider use of telehealth and remote work as an alternative to office closure. CMA has extensive resources on telehealth and COVID-19 on its website, including a CMA's COVID-19 Telehealth Toolkit for Physician Practices.

**EDD'S RAPID RESPONSE.** Employers planning a closure or major layoffs as a result of COVID-19 can get help through the EDD's Rapid Response program. Rapid Response teams will meet with employers to discuss specific needs, help avert potential layoffs, and provide immediate on-site services to assist workers facing job losses. Services can include upgrades to current workers' skills, customized training, career counseling, job search assistance, help with filing unemployment insurance claims, and information about education and training opportunities.

**OTHER FINANCIAL ASSISTANCE.** Both the state and federal government have developed legislation focused on economic relief for small businesses. Refer to CMA's COVID-19 Financial Toolkit for Medical Practices, for a list of funding programs that could assist physicians in maintaining financial viability.

Office Closures and Patient Abandonment

Physicians who choose to temporarily close their practices should keep in mind their ethical and legal obligation not to abandon their patients. While no specific statute defines patient abandonment, it is considered unprofessional conduct by the Medical Board. Courts interpreting the parameters of the obligation have upheld patient abandonment claims where: 1) the patient proves that a physician-patient relationship exists; 2) the patient held a reasonable expectation that care would be provided; 3) that the physician failed to carry out their obligation and; 4) that the patient was harmed as the result of the physician not providing care to the patient.

Accordingly, physicians considering closing their practice temporarily will need to notify existing patients of the closure and communicate with patients, in particular those patients who may have an immediate care need, with regard to how they can access alternative care. In general, simply directing patients to the emergency room is not recognized as sufficient coverage for patients, particularly in light of potential exposure to COVID-19. Practices will also need to inform patients of how they can access their medical records in the event the office is closed.

For additional information that about these obligations, see CMA On Call #3503, "Termination of the Physician-Patient Relationship." CMA's health law library is free to members. Nonmembers can access documents for $2 per page. For specific advice about to best communicate with and provide coverage for the patients in their particular practice, physicians should contact their professional liability carrier or personal attorney.
Notification Requirements

On March 17, 2020 Governor Newsom issued Executive Order N-31-20, which temporarily suspends the existing 60-day notice requirement in the California WARN Act (Cal/WARN) for employers to give written notice to employees of a mass layoff or closure of an establishment. The suspension was intended to permit employers to act quickly in order to mitigate or prevent the spread of COVID-19.

Notably, the Executive Order does not suspend Cal/WARN in its entirety, nor does it suspend Cal/WARN for all covered employers. Rather, it suspends Cal/WARN’s 60-day notice requirement for those employers that satisfy the Order’s specific conditions, and now requires those employers to provide notice as soon as practicable. The Labor Commissioner’s Office has provided further guidance on the conditional suspension of the Cal/WARN notice requirements on its website.

Q In the event I lay off staff temporarily, must I pay out vacation or other pay?

A Yes, the Labor Commissioner has taken the position that if anyone is laid off beyond a pay period, the employee is entitled to be paid any accrued wages as if terminated. This means that any accrued vacation must be paid, as any other wages upon the employee being laid off.

Emergency Paid Sick Leave and Family Medical Leave

On March 18, 2020, the Families First Coronavirus Response Act (FFCRA) was signed into law to expand paid sick leave and family leave benefits for employees and to provide employers refundable tax credits to reimburse them for the cost of providing the expanded leave. This section outlines the sick leave and family medical leave provisions of the FFCRA, including its exemptions, employer notification requirements and tax credits available under the FFCRA for employers.

Emergency Paid Sick Leave

Beginning on April 1, 2020, the Emergency Paid Sick Leave provisions of the FFCRA requires covered employers (those with fewer than 500 employees) to provide employees with paid sick leave if they are unable to work or telework because the employee is:

- Subject to an isolation order
- Advised by a health care provider to quarantine
- Experiencing COVID-19 symptoms (and seeking diagnosis)
- Caring for an individual under order or advised to quarantine
- Caring for a child under 18 whose school or childcare is unavailable due to COVID-19
- Experiencing any substantially similar condition as specified by HHS

Covered employers are required by the FFCRA to provide employees with 80 hours of paid sick leave. Employees who take leave because they are subject to an isolation order, have been advised to quarantine, or who are experiencing COVID-19 symptoms are eligible for their full wages (up to $511/day)
while employees who are caring for another are eligible for 2/3 of their wages (up to $200/day). This leave is in addition to any pre-existing paid leave.

Note that the FFCRA allows employers to exclude healthcare providers and emergency responders from these provisions. Under the FFCRA, a "health care provider" is broad and includes anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity.

CMA anticipates the Department of Labor will promulgate regulations to implement these provisions.

**Q** Can an employer require an employee who is quarantined to exhaust paid sick leave?

**A** No. The California Labor Commissioner has indicated that an employer cannot require that a quarantined worker use state paid sick leave. California Labor Code §246 provides that the employee has the right to decide whether to use paid sick leave. However, if the employee decides to use paid sick leave, the employer may require the employee take a minimum of two hours of paid sick leave. The determination of how much paid sick leave will be used is once again up to the employee.

In the event that accrued sick leave is exhausted, other leave may be available. If the employer has a vacation or paid time off policy, an employee may choose to take such leave and be compensated provided that the terms of the vacation or paid time off policy allows for leave in this circumstance.

**Q** May an employer ask an employee who calls in sick if they are experiencing symptoms of COVID-19?

**A** Yes. The U.S. Equal Employment Opportunity Commission has indicated that during a pandemic such as COVID-19, an ADA-covered employer may ask an employee that calls in sick if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat. Additionally, the employer may ask if the employee has been tested for COVID-19, and the results. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

**Q** We are under a shelter-in-place order, so do all employees have a qualifying reason to utilize Emergency Paid Sick Leave as they are subject to local quarantine or isolation order?

**A** Not necessarily. Health care workers are among the essential groups of workers identified by the State Public Health Officer as exempt from Gov. Newsom’s statewide order. The list of essential health care workers is expansive and includes, among others, physicians, nurses and assistants, pharmacists, and physical and occupational therapists and assistants. Please visit the link above for the complete list of essential workers who are exempt from Executive Order N-33-20.

Additionally, the FFCRA permits employers to exclude "health care providers" from its paid sick leave provisions. Under the FFCRA, a "health care provider" is broad and includes anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering
health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity.

However, essential employees who become infected, must care for a loved one, or have become exposed would satisfy the rules, and other statutes, that would grant them protection for a leave. This is because the FFCRA allows a leave for anyone under the local stay at home orders, but an employee may satisfy the other reasons under the FFCRA to permit the leave, such as being exposed or contracting COVID-19, caring for someone who has contracted COVID-19, or satisfy the other reasons.

Emergency Family and Medical Leave

In addition to expanding sick leave for certain employees, the FFCRA expands certain provisions of Family Medical Leave Act (FMLA). FMLA traditionally entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons while continuing to retain their group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Under the FMLA, an employee is able take up to twelve (12) weeks of leave in a 12-month period for:

- The birth of a child and to care for the newborn child within one year of birth
- The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement
- To care for the employee’s spouse, child, or parent who has a serious health condition
- A serious health condition that makes the employee unable to perform the essential functions of his or her job
- Any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a covered military member on “covered active duty”

Beginning on April 1, 2020, the FFCRA extends FMLA protections to employees for up to twelve weeks for a "qualifying need." A "qualifying need" is limited by the FFCRA to caring for a child under 18 whose school is closed or whose “childcare provider” is unavailable due to COVID-19. This emergency provision is extended to employees who have worked for an employer for at least 30 days and applies only to employers with fewer than 500 employees. While FMLA is traditionally unpaid leave, under the FFCRA, after their first 10 days of emergency family leave, employees who take leave for a "qualifying need" are eligible for two thirds of their regular pay (up to $200/day).

Note that the FFCRA allows employers to exclude healthcare providers and emergency responders from these provisions. Under the FFCRA, a “health care provider” is broad and includes anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity.

CMA anticipates the Department of Labor will promulgate regulations to implement these provisions.
Q Can an employer ask for proof of the employee having dependents whose school has closed or medical certification for an employee needing to care of an ill family member related to COVID-19?

A Yes. An employer may require an employee to provide documentation of their need to take emergency family and medical leave. The [U.S. Department of Labor's website](https://www.dol.gov/agencies/whd/ffcra) has additional guidance as to the extent of the inquiry.

Q Can employee apply for both Emergency Family and Medical Leave under the FFCRA and Unemployment Benefits?

A An employee is not eligible to collect unemployment benefits while being covered under an approved FMLA leave because the employee is still employed, he or she is just not working any hours with their employer. To receive unemployment benefits, an individual generally has to be "able and available" to work. An employee on FMLA is still employed and not available for other work. Additionally, the FFCRA's expanded family leave benefit will now be paid after the first 10 days.

**Notice Requirements**

The FFCRA requires that each employer must post a notice of the FFCRA leave requirements in a conspicuous place on the employer's premises. An employer may satisfy this requirement by emailing or direct mailing the notice to employees or posting the notice on an employee information internal or external website. Given the current stay-at-home orders, employers may wish to email the notice to all employees who are working remotely. The Department of Labor has posted a [model notice](https://www.dol.gov/agencies/whd/ffcra) on its website.

There is no specific guidance that provides for an exception to the posting requirement, for those employers who are exempted; however, [Department of Labor guidance](https://www.dol.gov/agencies/whd/ffcra) indicates that only "covered" employers must provide notice.

**Tax Credits**

The FFCRA provides employers with a refundable tax credit to reimburse them for the cost of providing the paid sick and family leave wages required by the Act. For purposes of claiming the tax credit, the cost of proving leave includes the cost of providing group health insurance and any Medicare taxes attributable to the employee's wages in addition to an employee's wages. Eligible employers are entitled to quarterly refundable tax credits, allowed against the employers' portion of Social Security taxes. If the cost of leave exceeds the employer's entire federal employment tax bill, the employer can request an advance refund. For more information about the FFCRA tax credit, visit the [Internal Revenue Service's website](https://www.irs.gov/).  

Q Can an employer get both the FFCRA tax credit and the Employee Retention Credit under the CARES Act?

A Yes, if an employer meets the requirements for the retention credit, it may receive both credits, but not for the same wages. The amount of qualified wages for which an employer may claim the Employee Retention Credit does not include the amount of qualified sick and family leave wages for which the employer received tax credits under the FFCRA.
COVID-19 in the Workplace

The proliferation of COVID-19 cases has raised a number of questions for physician practices with regard to how to deal with employees who are either at risk for contracting or who have contracted COVID-19. This section of the guide addresses a few of the most frequently asked questions from CMA’s physician members.

Q Can an employer ask staff to leave the office to self-quarantine if the employer suspects them to be sick?
A Yes. The CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace. The Americans with Disabilities Act does not prohibit employers from asking staff to leave the workplace to self-quarantine when based on the CDC’s guidance.

Q How much information may an employer request from an employee who calls in sick, in order to protect the rest of its workforce during the COVID-19 pandemic?
A The U.S. Equal Employment Opportunity Commission has indicated that during a pandemic such as COVID-19, employers may ask such employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat. An employer may also ask an employee who has exhibited symptoms of COVID-19 whether that employee has been tested for the disease, and the results of the test. Employers must maintain all information about employee illness as a confidential medical record in compliance with the Americans with Disabilities Act.

Q Can an employer inquire whether or not an employee has travelled to areas that might be considered high-risk areas for exposure to COVID-19?
A Yes. The U.S. Equal Employment Opportunity Commission has stated that when an employee returns from travel during a pandemic an employer is not obligated to wait for symptoms to develop before asking questions about potential exposures. As a result, an employer is permitted to inquire whether employees traveled to known locations that might have resulted in exposure, even if the travel was personal.

Q Should practices disclose to the local health authority the identities of employees who have tested positive for COVID-19?
A Physician employers should disclose the identities of staff they know who have tested positive for COVID-19 to the local health authority. California Health & Safety Code §120250 broadly requires physicians to report the name and location of a person with any infectious, contagious, or communicable disease to the local health authority, along with the nature of the disease. COVID-19 is listed as a reportable disease under the highest risk category under applicable state law, and therefore must be reported immediately by telephone in each instance.

Q Should practices disclose to patients and other employees the identities of employees who have tested positive for COVID-19?

CMA COVID-19 PHYSICIAN EMPLOYER TOOLKIT
Physicians should not disclose the identities of any staff known to have tested positive for COVID-19 to the general public. The CMIA and HIPAA contain explicit exceptions for disclosures required by law, including for the purposes of containing communicable diseases. However, no California or federal law requires or permits a disclosure of an individual’s health information to the public at large.

The CDC has advised that if an employee is confirmed to have COVID-19, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the Americans with Disabilities Act (e.g., not disclosing the name of the infected employee(s) to coworkers).

**Q Are employees who are exposed to COVID-19 eligible for Workers' Compensation benefits?**

**A** Possibly. The California Department of Labor has indicated that an employee may be eligible for Workers’ Compensation if they are unable to do their usual job because they were exposed to and contracted COVID-19 during the regular course of their work. Workers’ Compensation law would allow an employee access to medical treatment as well as wage replacement. For more information about COVID-19 and Workers’ Compensation, visit the California Division of Workers Compensation.

### Additional Resources for Employers

- CMA COVID-19 Resource Center: [CMAdocs.org/covid-19](http://CMAdocs.org/covid-19)
- California Department of Industrial Relations: [dir.ca.gov/dlse/2019-Novel-Coronavirus.htm](http://dir.ca.gov/dlse/2019-Novel-Coronavirus.htm)
- California Employment Development Division: [edd.ca.gov/about_edd/coronavirus-2019.htm](http://edd.ca.gov/about_edd/coronavirus-2019.htm)
- California Coronavirus Response: [covid19.ca.gov](http://covid19.ca.gov)
- United States Department of Labor: [dol.gov/agencies/whd/pandemic](http://dol.gov/agencies/whd/pandemic)