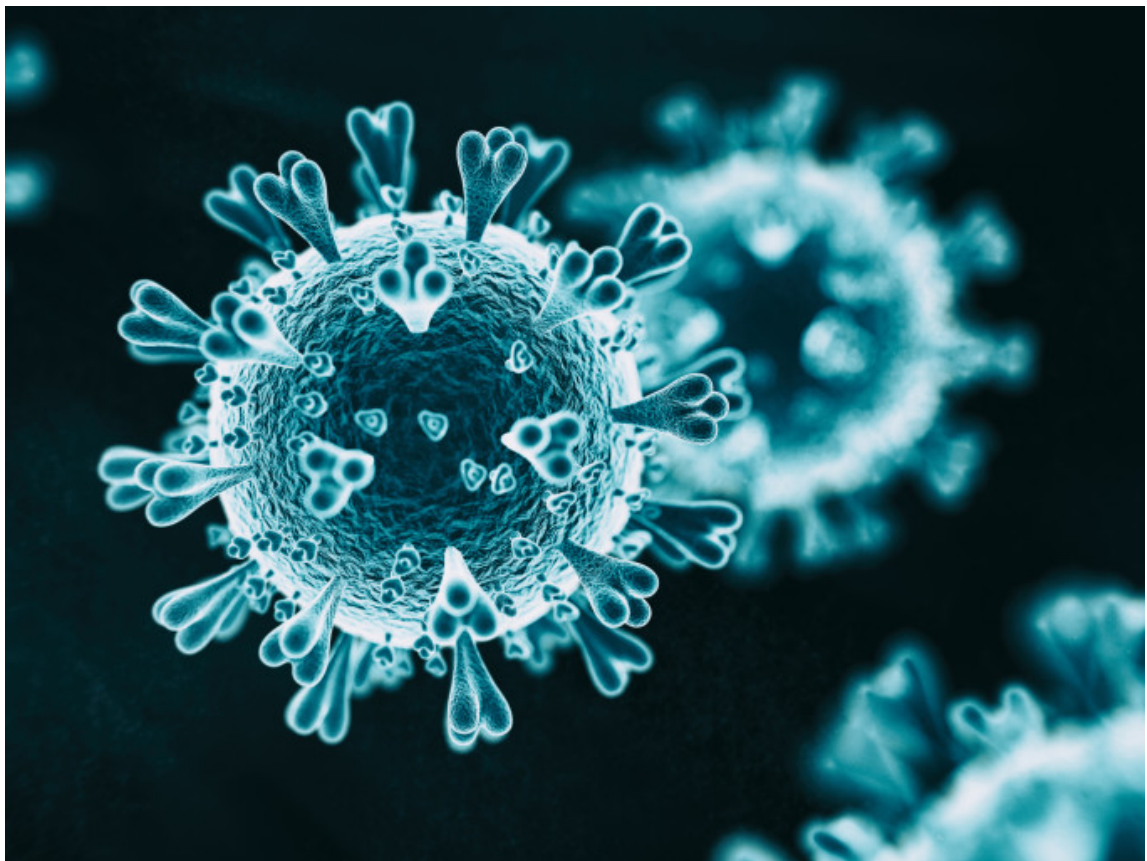


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# Employment Laws to Keep in Mind During the Coronavirus Outbreak

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**A**s COVID-19 spreads in the United States, many employees are considering working from home to avoid and prevent the potential spread of the virus in their workplaces. A handful of tech companies, including Twitter and Microsoft, have asked their employees to work from home. Employees are also wondering how much sick leave they might need to take if they do become infected and need to be quarantined. Below is a summary of the state of the law on these issues in California.

### **Remote work**

Working remotely, of course, is only an option for workers in certain sectors. If an employee has a job in which telecommuting is possible, doing so is usually just a matter of working out the details with the employer, *e.g.*, how long the employee will be telecommuting for, and whether the employee will need to use an employer-provided laptop.

If an employee works in a sector that isn't amenable to remote work, such as retail or food service, the situation is stickier. Staying home from work without the employer's approval would likely subject that employee to discipline, including termination -- assuming the employee isn't sick and doesn't have any other risk factors, such as having just returned from a trip to a country that's experiencing a coronavirus outbreak. An employer is likely not precluded from taking adverse action against an employee who isn't sick but doesn't show up for work due to fear of being exposed to the virus.

## **Sick leave**

Employees who are sick can take advantage of accrued paid sick days. There isn't a federal law mandating that employers provide paid sick leave -- and before July 1, 2015, there wasn't one in California either. That changed with the passage of the Healthy Workplaces, Healthy Families Act of 2014 (Lab. Code, §§ 245-249, 2810.5), which requires all California employers to provide eligible employees [at least a minimal level](#) of paid sick leave.

It's worth noting that, under the Act, an employer may cap accrual at 48 hours or 6 days per year, and may limit an employee's use of accrued leave to 24 hours or 3 days per year -- which isn't a lot of time, especially if an employee's trying to cover a 14-day quarantine. Employees should also be sure to comply with any employer policies about taking sick leave, such as calling in to a supervisor or other designated person.

There are also several local paid sick leave [ordinances](#) in California cities such as Berkeley, San Francisco, and Los Angeles that may provide greater leave benefits.

If an employee or employee's family member gets very sick, the employee might be able to take leave under the Family and Medical Leave Act (FMLA) or the California Family Rights Act (CFRA). But leave under those two acts is unpaid and comes with qualifications, such as having a qualifying "serious health condition" and having worked for the employer for a certain amount of time. Sick employees may also be able to take leave as a reasonable accommodation under the Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA).

## **Travel**

As the United States continues to grapple with COVID-19, employers have the option to limit their employees' business travel and conference attendance. But what if the employee has recently traveled for work? Can an employer request that the employee stay home for the virus's 14-day incubation period -- and will the employee be paid?

The answer to both questions is: maybe. If the employee can telecommute during the quarantine, there's obviously not an issue. If the employee can't telecommute, the employer isn't obligated to pay the employee, particularly if the employee is non-exempt. In other words, the employer can make the employee take a two-week furlough. Note that some collective bargaining agreements have provisions about paid time off in emergencies.

## **Remaining questions**

It's unclear whether paid leave would be available to an employee who isn't sick, but is quarantined and can't telecommute.

Another question is whether an employer can order an employee who appears sick to go home. The answer is probably yes, according to an Equal Employment Opportunity Commission [guide](#) for pandemic preparedness in the workplace. The Occupational Safety and Health Act, which mandates a safe workplace, would also appear to permit and protect an employer's decision to send an employee home.

In all cases, good communication between an employer and employees is key. It's likely that most employers will be willing to work with employees to find solutions in an unprecedented situation. It's also in the employer's interest to incentivize employees to stay at home.