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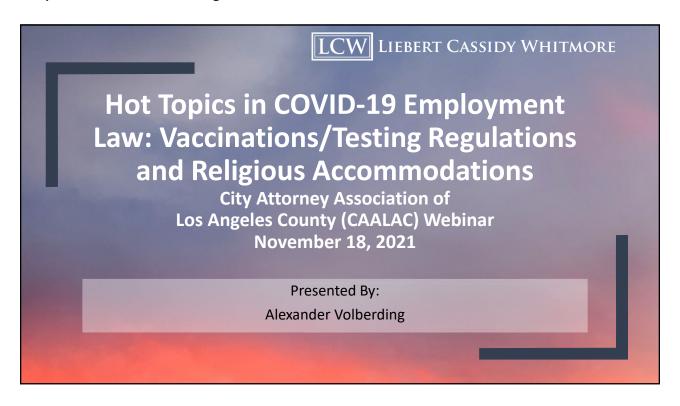
# CITY ATTORNEY'S ASSOCIATION OF LOS ANGELES COUNTY (CAALAC)

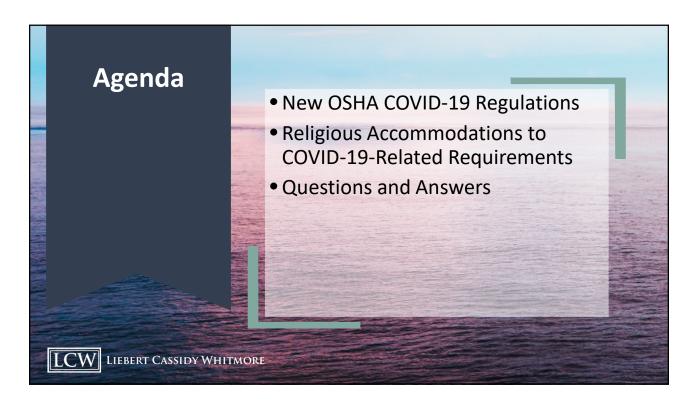
Hot Topics in COVID-19
Employment Law:
Vaccination/Testing
Regualtions and Religious
Accommodations

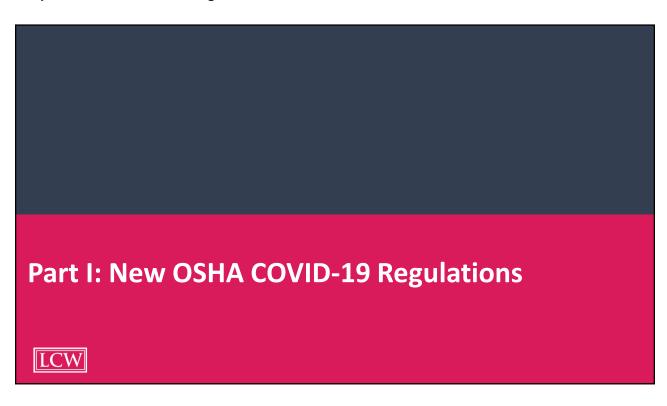
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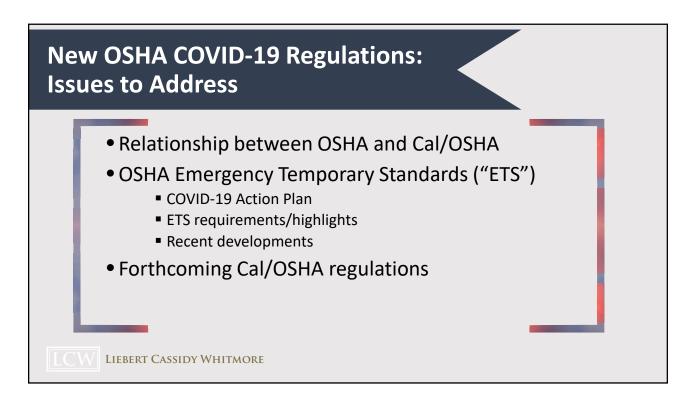
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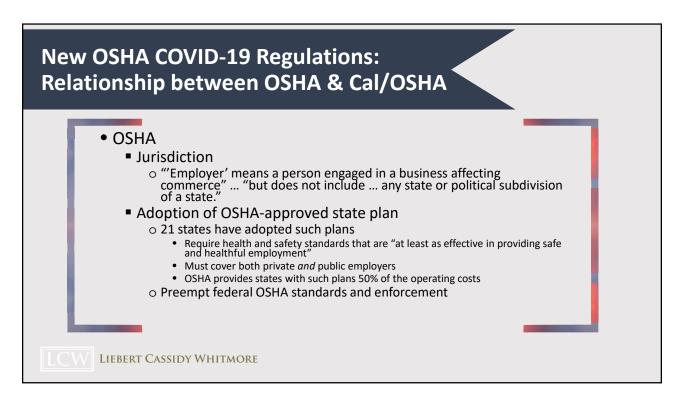
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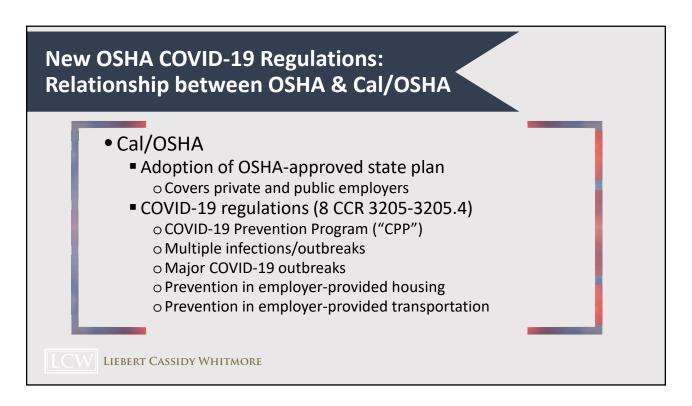




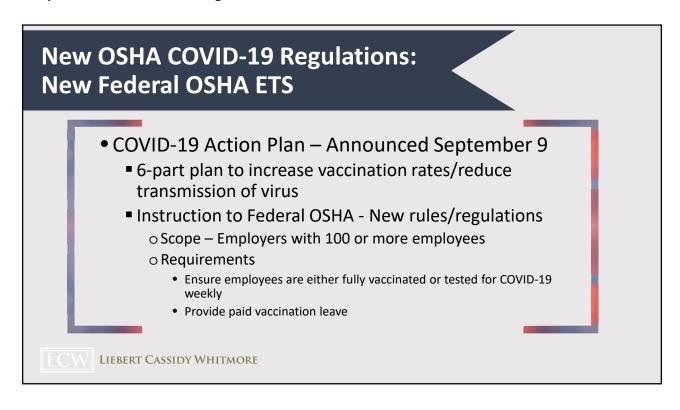


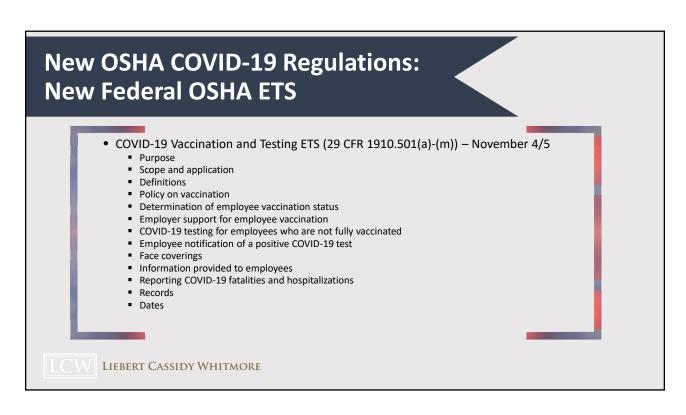




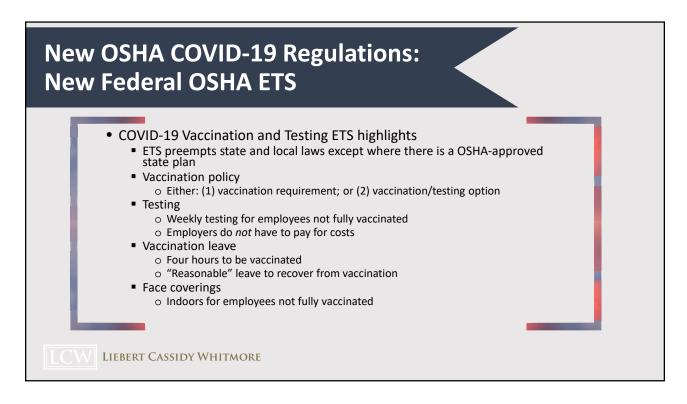














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## New OSHA COVID-19 Regulations: Cal/OSHA Regulations

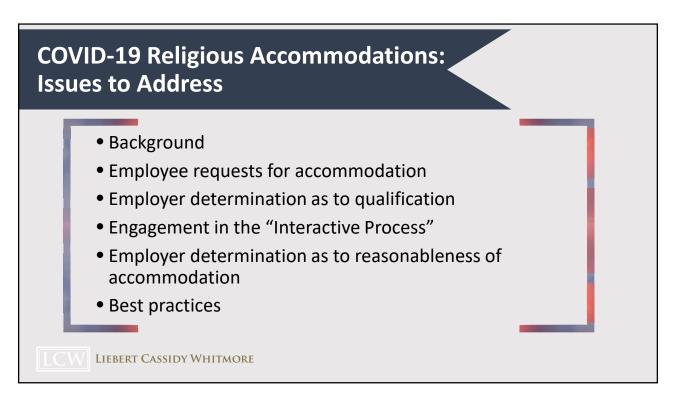
- COVID-19: Vaccination, Testing, and Face Coverings (8 CCR 3205.5-3205.8)
  - Adoption of regulations to maintain OSHA-approved state plan
    - o Unclear effect of stay on obligation
  - Draft regulations November
  - November 18 meetingSpecific regulatory requirements to be determined

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Part II: Religious Accommodations for COVID-19-Related Requirements

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### COVID-19 Religious Accommodations: Background: "Religion"/"Religious Beliefs"

- Title VII
  - Religion broadly defined
  - "All aspects of religious observance and practice"
- FEHA
  - Similarly broad protection of religious beliefs, observances, practices
    - Beliefs that are sincerely held and occupy a place of importance in the individual's life
    - o Beliefs do <u>not</u> need to be part of a formally recognized religion



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## **COVID-19 Religious Accommodations: Employee Requests**

- Employee requests for accommodation
  - Responsive to legal requirement or employer policy
    - Accommodation request form provided by employer
       Request submitted in other written form (e.g., email)
  - Other ways employees may request accommodation
     Overbal No "magic words" needed
- Minimum requirements
  - Employee *must* show that request for accommodation is:
    - o Being requested for religious reasons; and
    - o Based on a religious belief that conflicts with an employer policy

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## **COVID-19 Religious Accommodations: Determination of Qualification**

- Assessing the potential conflict
  - Employee articulates:
    - o Request for accommodation is for religious reasons; and
    - Request is related to a conflict between the employee's religious belief that and the employer policy
  - Employer determines:
    - There is a conflict between the policy/practice and the employee's belief; and
    - The employee qualifies based on the nature and sincerity of the employee's religious belief



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## COVID-19 Religious Accommodations: Determination of Qualification

- Determination of qualification depends on two principal questions:
  - How does the employee's religious belief, observance, or practice conflict with the employer policy?
  - Is the employee's religious belief, observance, or practice sincerely held?
- Determination should be made on an individualized case-bycase basis
  - Analysis of employee's statement regarding the <u>nature of their religious</u> <u>belief</u>, and its conflict with the employer's policy
  - Analysis of the employee's conduct and whether such conduct calls into question the <u>sincerity of the purported belief</u>





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## **COVID-19 Religious Accommodations: Determination of Qualification**

- Religions have specific attributes
  - Distinguishable from other belief systems, such as personal and political belief systems, that are <u>not</u> protected by Title VII and FEHA
- Three (3) factors standard:
  - 1. Whether the religion addresses fundamental and ultimate questions having to do with deep and imponderable matters: and
  - 2. Whether the religion is comprehensive in nature and consists of a belief-system as opposed to an isolated teaching; and
  - 3. Whether the religion can be recognized by the presence of certain formal and external signs.



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## **COVID-19 Religious Accommodations: Determination of Qualification**

- Potential follow-up questions:
  - What is the name of your religion?
  - Are you a member of a religious organization?
  - Please describe your belief system generally
  - How does the agency's vaccination requirement conflict with such beliefs?
  - Please describe what practices and observances your belief requires?
  - Do you have any additional information that you would like to share regarding your religious beliefs that supports your request for accommodation?





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## **COVID-19 Religious Accommodations: Determination of Qualification**

- Employee's request identifies:
  - Conflict between employer policy and employee's religious belief
  - Contextualizes the conflict it in terms of a comprehensive religious belief system
    - o Not merely an isolated teaching opposed to the policy
- Conflict should be specific
  - Vague and ambiguous conflicts may be insufficient
  - Clarifying questions may be necessary to ascertain specific conflict
- Purpose of accommodation: Resolve or reconcile the specific conflict
  - Effective accommodation resolves the conflict completely
  - Reducing, but not resolving, the conflict generally may be insufficient



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## COVID-19 Religious Accommodations: Determination of Qualification

- Establishing insincere conduct and an objective basis to question the sincerity of the employee's beliefs
  - Employee's observed/known conduct contradicts or conflicts with the professed belief;
  - Accommodation sought is particularly desirable, likely to be sought for secular reasons;
  - Timing of request is suspect
- Employer <u>may</u> request additional info going toward employee's sincerity where there is an objective basis to question
- May request, but may not require, specific form of additional info:
  - Third-party verification (clergy, fellow practitioner, etc.)
  - Written materials or employee's own explanation
- Unreasonable requests for verification (i.e., unnecessary or excessive) may be considered wrongly denying the accommodation or harassment





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## COVID-19 Religious Accommodations: The "Interactive Process"

- Obligation to engage in the interactive process
  - Title VII Does <u>not</u> expressly require interactive process
     BUT courts expect both sides to engage in "cooperative information-sharing
  - FEHA Requires interactive process
- Obligation to follow more prescriptive applicable guidance
  - General rule applicable to the qualification determination, the interactive process and determination of reasonableness
  - Obligation to engage in interactive process as required by FEHA
- Interactive process should be individualized
  - Case-by-case review of individual qualifications and determination of requested accommodations

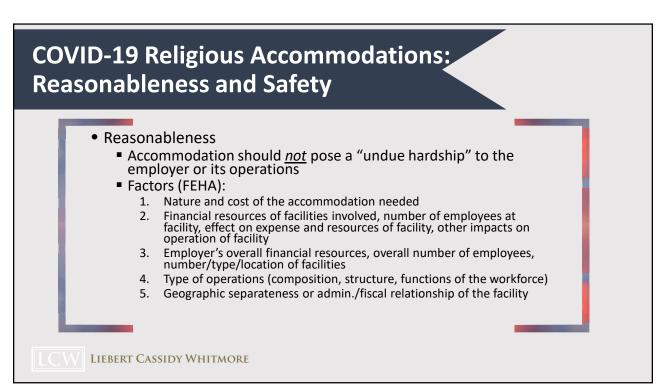


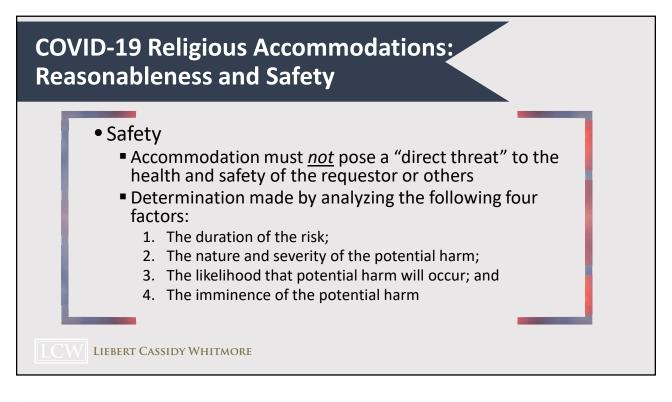
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## **COVID-19 Religious Accommodations: Reasonableness and Safety**

- Employer determination as to requested accommodation
  - Workplace accommodation requests should address both reasonableness and safety
  - Non-workplace accommodation requests should focus on reasonableness







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## COVID-19 Religious Accommodations: Making a Decision and Afterward

- Provide decision in writing
  - Rejection of request should be articulable/defensible
     Do not need to provide specific reason for rejection
- Decision should be final, not subject to appeal
- If accommodation offered, follow through
  - May revisit decision in future employee's beliefs and circumances may change

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## **COVID-19 Religious Accommodations: Overview: Best Practices**

- Individualized case-by-case analysis
  - Employee's qualification for the interactive process
  - Employer's determination regarding the reasonableness/safety of requested accommodation
- Standard and uniform questions regarding nature of religious belief
  - Use of standardized form
  - Standard preliminary questions
- Specific and tailored follow-up questions
- Document accommodation process thoroughly



