



# Vaccines, Telework, & Masks, Oh My!

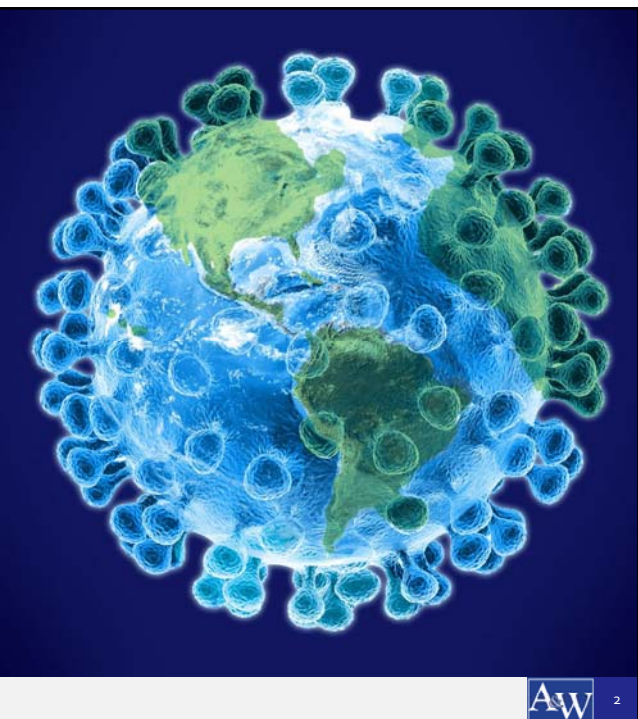
## The Latest COVID-19 Employment Laws

**A&W** ALESHIRE & WYNDER, LLP  
ATTORNEYS AT LAW

1

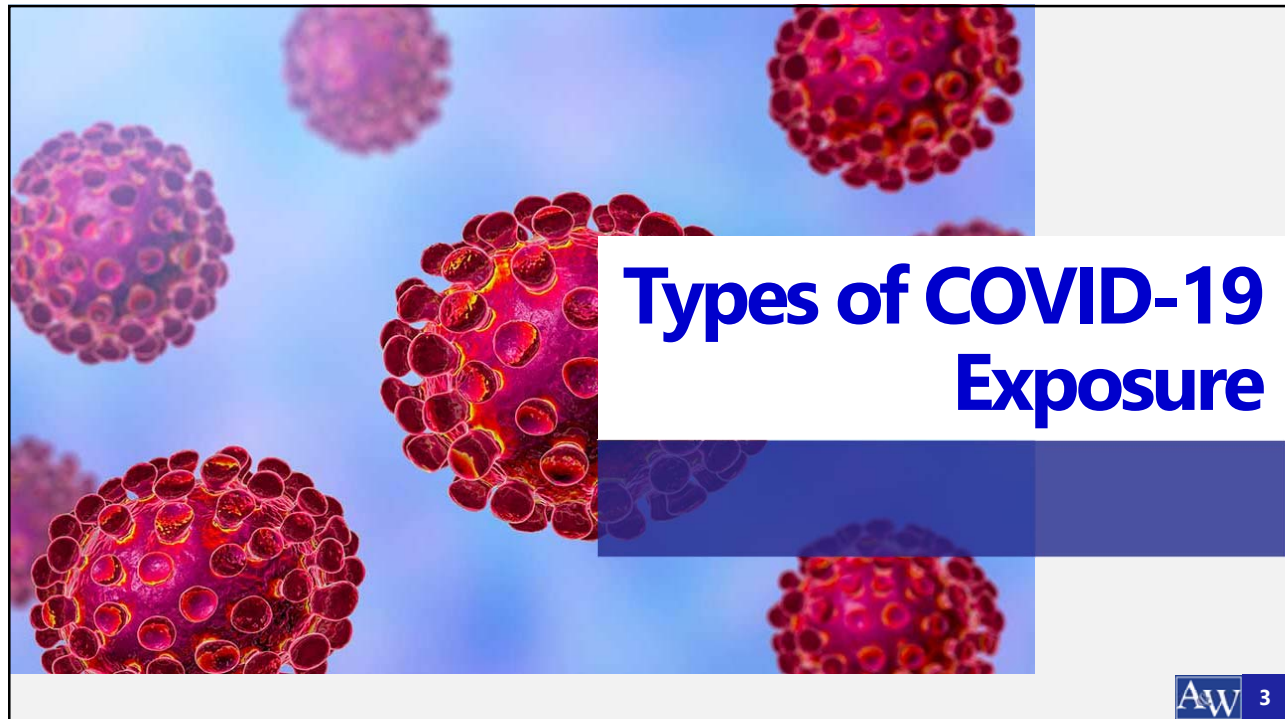
### OBJECTIVES

- Types of COVID exposure and appropriate responses
- Cal/OSHA's and AB 685's regulatory impacts on cities' responses to COVID
- Use of COVID-related employment leaves
- Legal and practical issues on mask-wearing and vaccinations
- COVID-related reasonable accommodations, including teleworking



**A&W** 2

2



3

## TYPES OF COVID-19 EXPOSURE

- COVID-19 is part of the flu family and affects the lower respiratory tract
- Symptoms are similar to the flu and begin 2-14 days after exposure
- COVID-19 spreads mainly through close contact from person-to-person in respiratory droplets
  - **Close Contact** = Being within six (6) feet of an infected person for at least 15 cumulative minutes within a 24-hour period, during their infectious period
  - **Other Contact** = Being more than six (6) feet of or less than 15 cumulative minutes with an infected person within a 24-hour period, during their infectious period
  - **No Contact** = De minimis contact with an infected person

AW 4

4

## TYPES OF COVID-19 EXPOSURE

- **INFECTED → ISOLATE**
  - Stay home until:
    - No fever for at least 24 hours without use of fever-reducing medicine AND
    - Other symptoms have significantly improved AND
    - At least 10 days have passed.
  
- **CLOSE CONTACT → QUARANTINE**
  - Stay home until:
    - At least 10 days have passed AND
    - No symptoms develop during the entire quarantine period
    - Even if test is negative, must complete at least 10 days of quarantine.

## TYPES OF COVID-19 EXPOSURE

- **OTHER CONTACT / NO CONTACT → MONITOR FOR SYMPTOMS**
  - May continue to work but monitor for symptoms for up to 14 days from exposure. If symptoms develop, employee should ISOLATE.
  - May want to get tested.
  
- **WHAT IF THE EMPLOYEE IS FULLY VACCINATED?**
  - May continue to work without quarantining upon being exposed if:
    - Received all required doses at least two weeks prior to exposure AND
    - Vaccination occurred within the last three months AND
    - No symptoms develop within 14 days after exposure.
  - Must still wear mask, maintain social distancing, and follow other protocols.

## TYPES OF COVID-19 EXPOSURE

- **COVID-19 may also spread through direct contact with a respiratory droplet on a surface (much less common)**
  - How long the virus survives depends on the surface\*
    - Paper (mail, tissues, toilet paper, magazines, newspapers, etc.): 3 hours
    - Copper (coins, jewelry, wires, etc.): 4 hours
    - Cardboard: 24 hours
    - Cloth: 2 days
    - Wood: 4 days
    - Plastic: 3-7 days
    - Metal: 5 days
    - Glass: 5 days
    - Paper money: 4 days
    - Face masks (exterior): 7 days

\* From a study published by the New England Journal of Medicine April 16, 2020

A&W 7

7



# COVID-19 Notices & Leave Benefits

A&W 8

8



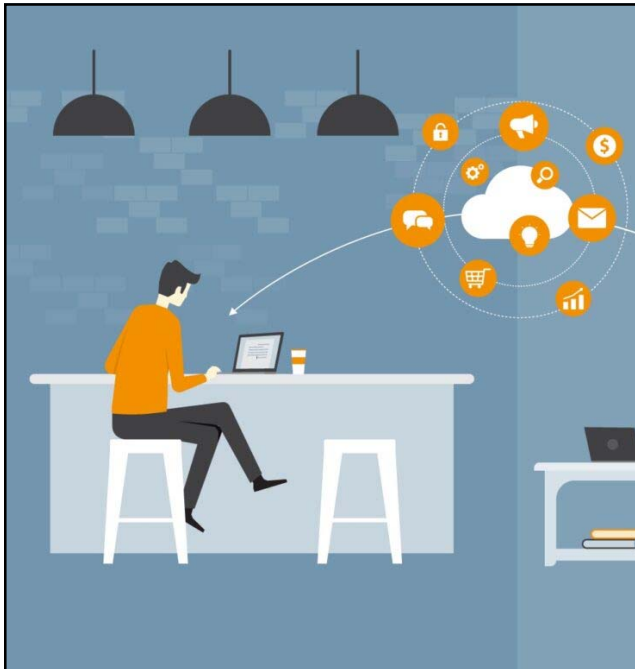
## FFCRA

- **Expired on December 31, 2020, unless extended by City until March 31, 2021**
- **Emergency Paid Sick Leave** (80 hours paid leave for FT employees)
- **Extended FMLA Leave** (up to 12 weeks paid leave, first two weeks unpaid)
- **City could extend one or both leaves**



## Cal/OSHA Regulations

- **Notice of potential exposure**
  - Given to all employees within same worksite (floor, building, or facility)
  - Within 1 business day
- **Maintenance of pay and benefits**
  - Can require exhaustion of accrued sick leave or other employer-paid leave
  - No maximum amount or monetary limit
  - Must be a work-related exposure or diagnosis
- **Prohibits requiring a negative test before returning to work**



## AB 685

- **Notice of potential exposure**
  - Given to all employees within same worksite (floor, building, or facility) and their union reps
  - Within 1 business day
- **Notice of injury reports to unions**
- **Notice of available leave and benefits, including workers' compensation, FFCRA (if applicable), Cal/OSHA leave, etc.**
- **Notice of City's disinfection and safety plan**



## COVID-19 LEAVE BENEFITS

If an employee gets COVID or is exposed:

- Families First Coronavirus Response Act (FFCRA)
  - FT employees - 80 hours; PT employees – average number of hours worked in two-week period
  - 100% of regular pay (max \$511/day)
- Workers' compensation benefits (if you contracted COVID-19 at work)
- Sick leave pay
- Other accrued leave pay
- Employer-provided pay (CalOSHA exclusion pay) for work-related illness or work-related exposure to COVID-19
- Potential disability benefits
- Employees with potential exposure also have ability to get tested at no cost during their working hours



13

### Masking Up

- **LADPH requires masks to be worn at all times while indoors except:**
  - When alone in an enclosed office
  - While actively eating and drinking
  - Specific tasks cannot feasibly be performed with a face covering
  - For those who have a medical or mental health condition or disability
- **Employees can be disciplined for not wearing masks**
- **Alternatives: face shield with draping, or unmasked employee is tested at least twice weekly for COVID-19**

AW 14

14

## Vaccinations

- EEOC states employers may mandate vaccinations
- Privacy concerns with asking about vaccines and health history
- More likely to find workers' compensation liability for an adverse reaction to vaccine if found that taking the vaccine was related to employment
- **Mandatory vs. Voluntary considerations**
  - Mandatory policy must minimize or reduce threat and be no more intrusive than necessary
  - Consequences of failure to comply



AW 15

15

## Vaccinations

- **Exempt from mandatory policy due to disability (ADA) or religious belief (Title VII)**
  - Disability = physical or mental impairment substantially limiting one or more major life activities
  - Religious belief = broad beliefs, practices, and observances
  - Interactive process to determine whether exemption can be reasonably accommodated
    - Continued masking, social distancing, sanitization, etc.
    - Teleworking
    - Undue hardship



AW 16

16





17

## TELEWORKING ISSUES

**Teleworking during the pandemic should only be permissible as a reasonable accommodation**

- Must have disability under ADA or FEHA
- Teleworking requested as an accommodation, but City can consider alternative accommodations
- Interactive Process
- Undue hardship
  - Financial considerations of city and department
  - Workload and burden on others in the department
  - Frequency (e.g., 2x per week or full time) and duration (e.g., a few months or indefinitely until pandemic ends)

**If teleworking is permitted generally, then must establish parameters and benchmarks of a policy**

18



# Thank You

Pam Lee 

949-250-5415 

plee@awattorneys.com 

www.awattorneys.com 



19