



Law Firm Management, COVID-19, and Social Distancing

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Beth Mora and Mary Grace Guzmán lay out crucial considerations and offer solutions regarding lawyer's responsibilities to their employees and clients during the COVID-19 pandemic in this guidebook.

COVID-19 & LEGAL ETHICS

Working Remotely

- Create a plan regarding mail, phones, document preservation, and maintaining confidential information.
- Set up virtual meetings through Zoom, G Suite or FaceTime. Have regular team meetings to discuss cases.
- Establish a protocol for how mail will be handled. Forward mail to your home, regularly visit the office to collect mail, expect eventual delays in mail.
- Identify who will have specific responsibilities. The managing partner is ultimately responsible for the firm and its employees.

In the Office

- Create a modified schedule rotating who is in the office and who works remotely.
- Establish a protocol regarding who may visit the office and how visitors will be greeted.
- Establish clear rules regarding circumstances where individuals will not be allowed in the office.
- If you are following CDC guidelines for businesses, be sure everyone, including partners and associates, are involved in cleaning.
- Read local and state orders for Shelter in Place, as there is an exception for legal services.
 - [State of California Executive Order N-33-20](#)
 - [State Infrastructure Workers guidelines](#)

Communicate to Your Client—Rule of Prof. Cond. 1.4

- Manage your client's expectations. Expect clients to express their fears and frustrations—don't take it personally.
- Send your clients a letter or email advising them of any anticipated delays in their matter, including postponements of court hearings, trials, depositions, disbursement of settlement checks, administrative hearings, and mediation/arbitrations.
- Send subsequent updates, as you learn new information.
- If depositions, arbitrations, or mediations are scheduled with the expectation that the client will appear, ask client about health considerations. Keep reason for postponement confidential.
- Include a notice of office hours and expected delays in email signature.

Managing Phone Calls

- Forward landline to cellphones.

- Update voicemail messages regarding potential delays, changes in court openings and closures, or your office hours and availability.
- Anticipate that your clients may ask for information not related to their case, such as community or government services.
- Communication is key to help avoid frustrated clients.

Check Your Calendar

- Stay on top of your calendar and tolling of deadlines.
- Where appropriate, make requests for waivers of statutory deadlines, such as discovery exchanges, interrogatories, or depositions.
- Anticipate a snowball effect in all aspects of your legal work, especially with court closures.

Document Preservation and Other Issues

- Subscribe to a cloud-based service to house and share documents between employees. Clio, Practice Panther, Dropbox or GoogleDocs are options.
- If you are taking physical files home, create a tracking system.
- Advise employees of how you expect files to be handled.

Electronic Files Not Available on Cloud

- Create a protocol regarding how electronic files will be handled, especially if employees will be using their personal computers.
- If a client is dropping off physical files, have a protocol of how you will receive the documents.
- Encourage clients to deliver the documents electronically and maintain the physical documents and deliver at a later date. At this point, you may only need to review copies and not the originals.

Court Closures

- If you practice in several counties, you will need to closely monitor closures and guidelines regarding how each county court system will operate. Review local rules!
- Create a system to keep track of court procedures for each of your clients and, if appropriate, keep clients abreast of the impact on their matters.
- Review rules and how each county is managing active cases and emergency filings; also know what is defined as an emergency.
- Similarly, Federal Courts are closed on a jurisdiction-by-jurisdiction basis.

COVID-19 & LEGAL ETHICS

Interest on Lawyer Trust Accounts (IOLTA)

- If your office has moved to a remote practice, create a protocol regarding collecting mail, depositing of checks, and notifying clients of disbursements.
- Identify who will pick up the checks, when the funds will be deposited, when clients or third parties will be notified of receipt of funds.
- Use a mobile banking app and deposit checks from your phone or other mobile/remote check processing service. Please note most banks have limits on how much may be deposited in the IOLTA per day/week/month using a mobile app.

Disbursements

- Rule of Professional Conduct 1.15(d)(1) requires an attorney to promptly notify clients and third parties of the receipt of funds and property.
- Keep in mind, Rule 1.15(d)(1) is triggered when the attorney is in receipt of funds. Have mail forwarded to home addresses to avoid office mail delivery issues.
- Request that disbursements be wire transferred to trust.
- Advise clients to expect delays in disbursement of settlement checks.

Mediation and Arbitration

- Call your arbitrator/mediator for guidance.
- Private mediators are engaging in video mediation; check with mediators.

Be Civil

- Remember we have a duty of civility and a duty to fairness to opposing parties/counsel. Now is not the time to be difficult.
- Do not take advantage of the crisis to create unnecessary delays or frustrations.
- Ask yourself, "If I do X, will it help or hurt my client's interests?"

Have Contingency Plan

- Partner with other counsel to cover each other's cases, especially if you get sick.
- Keep case summaries to allow another attorney to easily take over the case should you fall ill.
- Create a plan on how you will communicate possible COVID-19 exposure to clients, third parties, and other individuals, who need to know of their possible exposure. CDC has guidance regarding workplace exposure. This is not an ethics issue, but a business practice and health consideration.
- Keep a list of bank account numbers, passwords, subscriptions, memberships, etc., and have a family member aware of where you are keeping this information.
- Update your billables and accounting regularly.

Guiding Rules and Statutory Codes

- California Rules of Professional Conduct
 - Rule 1.1—Competence
 - Rule 1.3—Diligence
 - Rule 1.4—Communication
 - Rule 1.4.1—Communication of Settlement Offers
 - Rule 1.15—Safekeeping of Funds and Property of Clients and Other Property
 - Rule 3.1—Meritorious Claims and Contentions
 - Rule 3.2—Delay of Litigation
 - Rule 3.3—Candor Toward Tribunal
 - Rule 3.4—Fairness to Opposing Party and Counsel
 - Rule 5.1—Responsibilities of Managerial and Supervisory Lawyers
 - Rule 5.2—Responsibilities of Subordinate Attorneys
 - Rule 5.3—Responsibilities of Nonlawyer Assistance
- California Rule of Court 9.7—Oath of Civility
- Business & Professions Code §6068

Stay Informed:

www.calbar.ca.gov/About-Us/News/COVID-19-Updates



COVID-19 UPDATES – www.calbar.ca.gov

The State Bar is closely monitoring and responding to the evolving COVID-19 (coronavirus) situation and its potential impact on our services to the public, licensees, and applicants, as well as the health and safety of our staff. The agency is following relevant guidance provided by local, state, and federal public health agencies.

COVID-19 & EMPLOYMENT LAW MATTERS

Wage Loss & Replacement Options

Employer Provided Compensation

- Employer can voluntarily provide compensation
- Earned and unused compensation (depends on the employer's policies):
 - Vacation
 - Sick (see below)
 - Paid Time Off (PTO)

AB 5

- Employees misclassified as independent contractors have the same rights to sick leave, unemployment, as well as other benefits
- Important for employers to engage in an AB 5 analysis with a qualified attorney to ensure that all workers are properly classified and are being provided appropriate benefits
- Misclassified employees can still file a claim for benefits such as with EDD

State of California, Employment Development Department

- [Self-Employed/Independent Contractor](#)
- Labor & Workforce Development Agency, [AB 5 Portal](#)

Unemployment (EDD)

- Layoff or reduction in hours
- Full or partial wage replacement
- Up to 26 weeks (or up to 39 weeks)
- \$40 to \$450 a week

State of California, Employment Development Department

- [Coronavirus 2019 \(COVID-19\) Resources](#)
- [Coronavirus 2019 \(COVID-19\) FAQs](#)
- [Employer Information](#)
- [Work Sharing Program \(Reduced Hours\)](#)

State Disability Insurance (SDI)

- Unable to work due to medical quarantine or illness related to COVID-19
- Non-work-related injury
- Certified by a medical professional
- Full/part time employee
- Full/partial loss of wages
- Up to 52 weeks
- Approximately 60-70% of compensation or \$50-\$1,300 a week
- Tax exempt

State of California, Employment Development Department

- [Disability Insurance Claim \(SDI\)](#)

Paid Family Leave (PFL)

- Unable to work because caring for ill or quarantined family member with COVID-19
- Certified by a medical professional
- Up to 6 weeks of benefits full/partial loss of wages
- Approximately 60-70% of compensation or \$50-\$1,300 a week

State of California, Employment Development Department

- [Eligibility for Paid Family Leave](#)
- [Paid Family Leave Claim](#)

COVID-19 & EMPLOYMENT LAW MATTERS

Wage Loss & Replacement Options

Paid Sick Leave

- [The Healthy Workplaces, Healthy Families Act of 2014](#), Cal. Lab. Code §§ 245-249, 2810.5, requires all California employers to provide eligible employees at least 3 days of paid sick leave
- Can be used if you or a family member are sick or for preventive care when civil authorities recommend quarantine
- Paid at your regular rate of pay (based on average of last 90 days)
- [California COVID-19 Supplemental Paid Sick Leave](#) may add up to 80 hours of supplemental paid sick leave.
- Several cities have additional sick leave policies: Berkeley, Emeryville, Los Angeles, Oakland, San Diego, San Francisco, and Santa Monica (6 to 9 days of sick leave)

State of California, Department of Industrial Relations

- [California Paid Sick Leave: FAQ](#)

Federal Families First Coronavirus Response Act (FFCRA) Emergency Paid Family & Medical Leave

- Unable to work because caring for a child whose school or place of care has been closed for reasons related to COVID-19
- Up to 10 weeks additional paid leave
- Approximately 60-70% of compensation, not to exceed \$200 per day or \$10,000 total
- [Learn more about the FFCRA](#) or [how to file a FFCRA emergency claim](#).

Workers' Compensation

- If unable to do your usual job because you were exposed to and contracted COVID-19 during the regular course of your work, you may be eligible for workers' compensation benefits
- Includes temporary disability payments which begin when your doctor says you cannot do your usual work for more than 3 days or are hospitalized overnight
- Includes up to 104 weeks temporary disability of 2/3 gross wages and related medical treatment

State of California Department of Industrial Relations

- [File a Claim](#)
- [Learn more about Workers' Compensation](#)

Short Term Disability & Long-Term Disability

- Employers may offer short term disability benefits and long-term disability benefits
 - Supplemental disability benefit
 - Family benefit
- You may have a private disability benefit plan
- Obtain Summary Plan Document which describes benefits rights and terms
- [Employee Retirement Income Security Act](#) governs private disability benefits

Additional Resources:

1. [California Labor & Workforce Development Agency Coronavirus 2019 \(COVID-19\) Resources for Employers and Workers](#)
2. [Chart - Benefits for Workers Impacted by COVID-19](#)
3. State of California, Department of Industrial Relations [Coronavirus Disease – FAQs on laws enforced by the California Labor Commissioner's Office](#)



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LEAVE RIGHTS AND LEAVE PROTECTIONS

Reasonable Accommodations Under the ADA/FEHA

- Both the federal Americans With Disabilities Act and California's Fair Employment and Housing Act require employers to reasonably accommodate employees with disabilities
- Medically Certified—though may not be able to do so
- ADA applies to employers with 15 or more while FEHA applies to employers with 5 or more employees

Example: Persons with preexisting condition/immunocompromised may request work from home accommodation. To deny, employer must meet high standard that accommodation is an undue hardship. Following an interactive process, if employer cannot accommodate telecommuting, leave maybe a reasonable accommodation.

California Family Rights Act (CFRA) & Family and Medical Leave Act (FMLA)

- Medical Leave for own serious health condition or to care for a family member's serious health condition
- Medically certified—may not be able to do so in advance
- Job-protected, unpaid leave for a maximum of 12 weeks (can be intermittent)
- Continuation of health benefits
- Employee must have worked 1 year, 1250 plus hours, at least 50 employees work within 75 mile radius
- Often unpaid, though may apply for SDI, Short Term Disability through employer or a private Short Term Disability plan.

Retaliation

An employer cannot engage in retaliation against an employee for seeking leave or compensation for leave including for the following:

- Sick Leave, California Labor Code
- Workers' Compensation
- Fair Employment and Housing Act (FEHA)
- California Family Rights Act (CFRA)
- KinCare, [California Labor Code Section 230.8](#)



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COVID-19: EMERGING WORKPLACE VIOLATIONS

Employee Rights and Employer Duties Continue During a Pandemic

Employer must balance their responsibility to create a safe workplace with employee rights.

- California's Fair Employment and Housing Act (Gov. Code §12940 et seq.) makes it illegal for an employer to fire, fail to hire, or engage in discrimination, harassment or retaliation in any way against an employee because of their disability, race, national origin or association with persons of any disability, race or national origin.
- An employer is permitted to ask an employee to seek medical attention and get tested for COVID-19. The CDC states that employees who exhibit symptoms of influenza-like illness at work during a pandemic should leave the workplace.
- As COVID-19 was classified as a pandemic, with growing anxieties, it is incumbent upon employers to be vigilant against workplace discrimination, harassment and retaliation.

National Origin and Race Discrimination

- An employer, co-worker, customer and/or vendor, cannot treat an employee worse or in a differential manner, because of race, national origin or ethnic background as it would violate the Fair Employment and Housing Act.
- Includes real or perceived race or national origin
- Includes negative stereotypes

Examples:

- Employees will not sit with co-worker because they are of Asian decent.
- Employer only asks employee of Chinese national origin to work remotely.
- Employer only asked employee who is Italian if they have COVID-19.

Disability Discrimination

- Regarded as Disabled: An employer should not make assumptions about an employee's illness or health condition, real or perceived, including but not limited to assuming an employee has coronavirus or treat an employee as if they are sick.
- Employer cannot ask an employee if they have a health condition that would be or could be affected by coronavirus, such as a compromised immune system; doing so would violate privacy and disclose a confidential disability, however employers may inquire about symptoms related to COVID-19.

- The duty to comply with anti-discrimination laws and duty to accommodate does not interfere with or prevent employers from following the guidelines and suggestions made by the CDC or state/local public health authorities regarding COVID-19.

Example

- [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?](#)
- During a pandemic, ADA-covered employers (15 or more, though good guidance for though covered by FEHA as well) 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. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.
- US Equal Employment Opportunity Commission.
- [What You Should Know about the ADA, the Rehabilitation Act and the Coronavirus.](#)
- [Pandemic Preparedness in the Workplace and the Americans with Disabilities Act.](#)

Association Discrimination

- An employer cannot treat an employee differentially because of association with a person who is of a specific national origin or is believed to have coronavirus.
- For example, employers cannot make assumptions about family members, which can result in associational discrimination.

Privacy Rights

- Common law and Constitutional privacy rights.
- Employers can request that employees inform them if they are planning or have traveled to countries considered by the CDC and Prevention to be high-risk areas for exposure to the coronavirus. However, employees have a right to medical privacy, thus, employers cannot inquire into areas of medical privacy.
 - Example: Disability, real and perceived including immune compromised condition.
- If an employee has coronavirus, the employer is required to keep this information and all related medical information private and confidential.

COVID-19: EMERGING WORKPLACE VIOLATIONS

Employee Rights and Employer Duties Continue During a Pandemic

Additional Employment Resources:

- Legal Aid At Work:
 - A. [Coronavirus Update: Frequently Asked Questions](#)
 - B. [Unemployment Insurance and Other Benefits to Know About](#)
 - C. [Returning to Work after Coronavirus Shelter in Place Order is Lifted](#)
- US Department of Labor, Occupational Safety and Health Administration (OSHA): [Guidance on Preparing Workplaces for COVID-19](#)
- [Interim Guidance for Business & Employers; Plan, Prepare & Respond to Coronavirus Disease 2019](#)



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