

WORKERS' RIGHTS AND COVID-19, STATE + FEDERAL

Katie Wutchiett

**LEGAL
AID AT
WORK**

**RIGHTS AND PROTECTIONS
ARE RAPIDLY CHANGING, THIS
IS UP TO DATE AS OF 8/19/20**

**LEGAL
AID AT
WORK**

LEGAL AID AT WORK

- Non-profit organization **founded in 1916**
- Educational tools; litigation; clinics & helplines; policy advocacy; direct representation
- Work & Family; Gender Equity & LGBT Rights; National Origin & Immigrants' Rights; Wage Protection; Unemployment Benefits; Racial Economic Justice; Disability Rights

The screenshot shows the website's header with language options (English, Español, 简体中文), social media icons, and a search icon. A yellow button labeled "Quick Escape" is in the top right. The main content area features a "Coronavirus Update" section with a "LEARN MORE" button. Below this is a banner image of a smiling woman with the text "WE'RE PUTTING JUSTICE TO WORK".

English | Español | 简体中文

Quick Escape

LEGAL AID AT WORK

Coronavirus Update

Click "Learn More" to the right for information about workers' rights – CALIFORNIA WORKERS ONLY – during Coronavirus outbreak, our [Coronavirus FAQ](#) and for information about our Workers' Rights Clinics appointments during this time. We remain open to serve clients by phone and email, but our physical offices are currently closed to preserve public health.

LEARN MORE →

WE'RE PUTTING JUSTICE TO WORK

State and Federal Leaves

State:

- Existing
 - California Family Rights Act
 - Fair Employment and Housing Act
 - Family School Partnership Act
- Gap fills
 - Executive Order re Food Workers

Federal:

- Existing
 - Family Medical Leave Act
 - Americans with Disabilities Act
- Gap fills
 - Families First Coronavirus Response Act

Job Protection if you or a family member is sick or quarantined:

California Family Rights Act/FMLA

•Provides:

- Unpaid leave for a max. of 12 weeks (can be taken intermittently)
- Continuation of health benefits
- Covers parents, spouses, reg. domestic partners, and minor child

•COVID-19 may qualify as a serious health condition

- Does not apply to asymptomatic quarantine
- DFEH recognizes certification may not be practicable.

•Eligibility:

- 50+ employees w/in a 75 mile radius of job location;
 - 1+ year of service (does not have to be consecutive); and
 - 1250+ hrs of work in previous year
- Potential pay during this time off: Paid Sick Days, accrued vacation, SDI or PFL or UI (in some cases)

Job Protection if you are sick:

Fair Employment and Housing Act/ADA

•Eligibility:

- 5+ employees (FEHA)/ 15+ employees (ADA)
- Must have “disability” such as compromised immune system.
 - Common cold or seasonal flu symptoms would probably not be a disability, but complications from COVID-19, such as pneumonia, might be.

•Provides:

- Unpaid leave as a reasonable accommodation, unless undue hardship
- Telework as reasonable accommodation if can still perform essential functions of job
- But no requirement to continue health benefits

Job Protection if my child's school or child care is closed and I have to miss work to care for them?

Cal. Family School Partnership Act

Eligibility:

- Work for an employer with at least 25 employees.

Provides:

- Up to 40 hours of job protected leave each year to deal with a school or child care emergency, including closure by public health directive

CA Job Protection, COVID-19

Food Worker Paid Sick Days

- In April, Gov. Newsom announced Executive Order giving food workers 10 days of paid leave for:
 - Subject to local quarantine or isolation order
 - Ordered to isolate by health care provider for reasons related to COVID-19
 - Not permitted to work by employer due to concerns related to the transmission of COVID-19
- Full pay up to \$511/day
- Employer must have 500+ employees

More in the pipeline:

SB 1383, AB 3216

Federal Job Protection Laws

Family Medical Leave Act

- See CFRA

Americans with Disabilities Act

- See FEHA

Federal Job Protection, COVID-19 Families First Coronavirus Response Act

- Effective April 1, 2020 – Dec. 31, 2020
- Covers employers with <500 employees
- Provides:
 - 2 weeks of Emergency Paid Sick Days
 - 12 weeks of Emergency Paid School Closure Leave
 - Full wages up to \$511/day for own health; 2/3 up to \$200/day to care for others

FFRCA

- 2 weeks
 - **(1)** Employee is subject to federal, state, or local quarantine or isolation order related to COVID-19
 - **(2)** Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19
 - **(3)** Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis
 - **(4)** Employee is caring for an individual subject to quarantine or isolation order or advised to self-quarantine

- 12 weeks
 - **(5)** Employee is caring for a child whose normal source of care is unavailable due to the coronavirus

FFRCA Emergency Paid Sick Leave

- Potential Exemptions:
 - Health care providers/emergency responders
 - School closure leave: businesses w/ < 50 employees may claim exemption if would jeopardize viability

Pay While Out of Work

State Disability Insurance

Paid Family Leave

Unemployment Insurance

State Disability Insurance (SDI)



- **Up to 52 weeks of worker-funded, partial wage replacement** while **unable to perform your job**.
 - Having COVID-19 or having been exposed qualifies.
 - Certification required, but can be via telehealth.
 - Can receive even if laid off/terminated.
- **Wage replacement rate is 60% for most and 70% for lowest income earners.**
- Eligibility: Paid into SDI during “base period” (5 – 18 months in the past); misclassified workers should apply.
- One week waiting period waived for COVID-19.
- Citizenship/immigration status irrelevant.



CA Paid Family Leave (PFL)



- **8 WEEKS (as of 7/1/20)** of worker-funded partial wage replacement while:
 - ✓ Caring for a seriously ill close family member (parent, spouse, reg. domestic partner, sibling, parent-in-law, grandchild, grandparent); or
 - ✓ bonding with a newborn, adopted or foster child
- Can use PFL to care for family member ill or quarantined due to COVID.
- Can be used even if laid off/terminated.
- Certification required; telehealth appointment okay.
- **60% or 70%** of weekly wage, depending on income.
- No waiting period.
- Same eligibility as SDI; citizenship/immigration status irrelevant.

Unemployment Insurance (UI)



Temporary, partial wage replacement for people who are unemployed or underemployed through **no fault** of their own.

- Duration: 26 weeks (+13 weeks = 39 weeks) during claim year
 - Benefits: \$40-\$450/week (+\$600 = \$ 640 - \$1050/week)
 - Sufficient base period earnings; while authorized to work
 - Ongoing part-time wages must be reported and will be offset
 - No-fault separations include:
 - Layoff/ Lack of Work/Reduced hours
 - Termination without misconduct
 - Good cause quit
 - Caregiving obligations (including school closure)
 - Reasonable fear for one's health
- + Reasonable steps to preserve: remote, leave, etc. unless futile

Questions? & Additional Resources

Legal Aid at Work
www.legalaidatwork.org

Free legal advice and information in multiple languages

Work & Family Helpline
(800) 880-8047

Workers' Rights Clinic (Virtual)
(415) 404-9093

<https://legalaidatwork.org/factsheet/coronavirus-faq/>
(Covid19 Factsheet In English, Spanish, Chinese, Vietnamese)

Katherine Wutchiett: kwutchiett@legalaidatwork.org