



A DIVISION OF

**DOWLING | AARON**  
INCORPORATED  
ATTORNEYS AND COUNSELORS AT LAW



# **COVID-19: AG EMPLOYER CRISIS MANAGEMENT BRIEFING**

By: Michael C. Saqui

*This PowerPoint Presentation was created by The Saqui Law Group, a division of Dowling Aaron Incorporated, and is ©2020. All rights reserved.*

# CRITICAL INFRASTRUCTURE

AG UNDER SHELTER-IN-PLACE ORDERS



# California: “Shelter-in-Place” Executive Order

**Q: What does Governor Newsom’s Executive Order require? And who does it apply to?**

**A: Governor Newsom’s Executive Order requires “shelter-in-place” for all individuals living in California to stay at home or their residence except for critical infrastructure.**

- Executive Order applies to everyone in California, whether they are permanently living here or temporary resident (students, foreign workers, etc.)
- Executive Order does not apply to individuals working in critical infrastructure.
- Executive Order is in place indefinitely, i.e. no set end date at this time.

# Critical Infrastructure Exception (Taken from Feds.)

Food and Agriculture is “critical infrastructure” (also called “essential business”)

**Q: Who are we talking about in food and agriculture?**

**A: These folks (list not exhaustive) –**

- Grocery, pharmacy and other retail that sells food and beverages
- Food manufacturing and processing (packing, slaughter facilities, animal feed processing and their suppliers (i.e. food packaging)
- Field and fishery workers
- Animal agricultural workers and veterinary health (i.e. feed, bedding, transportation, distribution of veterinary drugs, slaughter/disposal)
- Truck delivery and transport
- Support services including commodity inspection; sanitation; fuel ethanol facilities; storage facilities
- Production of chemicals, medicines, and vaccines for ag
- Manufacture and maintenance of ag equipment and other infrastructure

**NOTE: make sure you check your local County orders as well.**

# Critical Infrastructure Exception

**Q: Who works in “critical infrastructure” (also called “essential business”)?**

**A: 16 sectors are identified as “critical infrastructure” – including manufacturing (metals, equipment, appliances, transportation vehicles); energy (electricity, oil and natural gas); food and agriculture (processing, storage, transportation; and chemical (fertilizers and pesticides uses)**

- Farming/Ag exception will apply to all of your workers including administrative or “office” staff because these folks support food production and distribution.
- Trucking will fall under both the Farming/Ag exception and the Transportation exception so your drivers are covered as well.

# Critical Infrastructure Exception

**Q: What do we do if our employees are stopped or questioned in-route to work?**

**A: Work in farming and agriculture is a critical infrastructure section without exception and employees should be permitted to travel and work within California.**

- We recommend that employees carry proof of employment (i.e. letter, paystub, employee identification card, etc.)
- Employers may also consider staffing a hotline to address these emergent situations during the Executive Order.
- Employers should consider ID Badges for Essential Personnel with the Company logo and a watermark stamp that says “ESSENTIAL” across the front.

# IMMIGRATION UPDATES FOR H-2A EMPLOYERS



**DISCLAIMER:** This represents the best current information but is subject to change quickly and with little notice. Please use this a starting point, but be sure to seek specific, up-to-the-minute professional guidance tailored to your farm or business.

# Update on H-2A Processing

## Department of State: U.S. Consulates in Mexico

On March 16, 2020, the Department of State announced that U.S. consulates around the world would cease routine nonimmigrant and immigrant routine visa processing but would continue processing visas in emergent circumstances. Immediately after the announcement, the State Department and Mission Mexico announced that U.S. consulates would continue to process nonimmigrant H-2A visas, recognizing that agricultural workers are “essential and critical” to the health and safety of our food source. Thereafter, the consulates continued to process H-2A visas for workers eligible for a waiver of the visa interview. Those eligible included only those whose H-2A visas *expired* in the previous 12 months. The consulates were instructed to discontinue H-2A visa processing for H-2A applicants who had never been issued an H-2A visa.

Significant efforts were made by various agricultural interest groups, including the National Council of Agricultural Employers, to request the State Department to expand the scope of the exception to “routine” visa processing. On March 30, 2020, those efforts came to fruition.

# Update on H-2A Processing

## **The State Department and U.S. consulates in Mexico dispersed the following announcement and FAQ:**

New procedures will enable us to process more visas in the coming days through two major changes that you should be aware of:

1. We have received authorization to grant interview waivers to applicants whose visas expired within the last 48 months (instead of the normal 12). These cases should be scheduled as IW/returning worker appointments now. Any applicant with derogatory information during the screening process must be interviewed in person. If such applications are submitted, their case will be held for administrative processing (refused under INA 221(g)) until such time as we are able to resume interviews. Applications that meet this new rule may be scheduled immediately as returning workers (H2-IW).

2. We have received authorization to grant interview waivers to applicants who have not previously received an H-2 visa, or whose last visa expired more than 48 months ago. These applications should be scheduled as H-2/first time appointments. Any applicant with derogatory information during the screening process must be interviewed in person. If such applicants apply, their case will be held for administrative processing (refused under INA 221(g)) until such time as we are able to resume interviews.

# FAQ'S FOR H-2A EMPLOYERS

*If an H-2A employer loses customers or otherwise decides not to use the H-2A program any longer this season, what are their options?*

- **Contract impossibility.** Under 20 CFR § 655.122(o), if “the services of the worker are no longer required for reasons beyond the control of the employer due to fire, weather, or other Act of God that makes the fulfillment of the contract impossible, the employer may terminate the work contract.” The employer can submit the request to the DOL Certifying Officer by email at [TLC.Chicago@dol.gov](mailto:TLC.Chicago@dol.gov), describing the loss of customers or other reason why fulfilling the contract has become impossible for reasons beyond the employer’s control. The request can occur at any point before the end of the season, including before any filing has taken place at USCIS, before the visa application at the consulate, or after the workers arrive in the U.S.
- Once the Certifying Officer approves the request, that ends the contract as of that date – the employer is responsible for paying the H-2A workers’ travel to their home or to their next employer, as well as 3/4 of the hours from their start date to the date of the Certifying Officer’s termination notice. If the workers have not left their home country yet (no DOL labor cert, no USCIS visa approval, or no consulate appointment completed), then an impossibility declaration by the Certifying Officer would avoid the travel costs, as well, and give the workers more of a chance to find other employers.
- A Certifying Officer-approved declaration of “contract impossibility” is different than having the Certifying Officer agree that the employer can “withdraw” the application for labor cert. In a withdrawal, the terms-and-conditions of the job order remain in force for any U.S. worker hired as part of the H-2A recruitment. 20 CFR § 655.172.

# FAQ'S FOR H-2A EMPLOYERS

*If an H-2A employer loses customers or otherwise decides not to use the H-2A program any longer this season, what are their options? (Continued)*

- **Transfer to another grower.** If you do not need the workers, but are contacted by or can identify another employer who does need workers (because of border or embassy delays in getting other workers into the US), the new employer can change their I-129 from “new hires” to “transfer” workers, naming your workers, if your workers consent to the transfer. That would be reported to DOL and DHS as a voluntary termination by the workers, which would void the 3/4 guarantee or return-travel obligations.
- **Continue the contract.** If the employer’s customer contracts remain in place, they can continue to perform under the H-2A contract. As the contract goes along, if work slows down, the employer can decide whether the contract has become impossible and pursue Option 1 above; the only exposure is the 3/4 guarantee, which is measured over the life of the entire contract and not week-by-week. If, at the end of the contract (either the stated end-date, or the date the Certifying Officer agrees to terminate it), the employer will need to compare the hours-offered vs. 3/4 of the hours stated on the contract and pay workers for the shortfall (if any).
- **Add more workers.** The OFLC guidance from last week expanded employers’ ability to use the “emergency filing” provisions in 20 CFR § 655.134 and get certified more quickly than the usual 60-to-75-day and 45-day timeline. Once certified to hire more H-2A workers, the employer can either take steps to transfer them from another employer (see #2 above) or complete the consulate/border-crossing process for new hires.

# FAQ'S FOR H-2A EMPLOYERS

## What happens if the H-2A Employee's home country is closed to incoming travel?

- Several H-2A sending-countries (Peru and Guatemala, for example) have closed their borders and airports to incoming travel, including their own citizens returning from working in the United States. We are working with USCIS on issuing guidance (and hope to have it soon) on what that means for these employees. Most importantly, we want to ensure that they are not deemed to have fallen “out of status” by overstaying their visa or staying beyond the three-year accumulated stay limitation in 8 CFR § 214.2. Beyond that, while they must remain in the United States, we would like to see them able to continue working – either for their previous H-2A employer or a new one.

# FAQ'S FOR H-2A EMPLOYERS

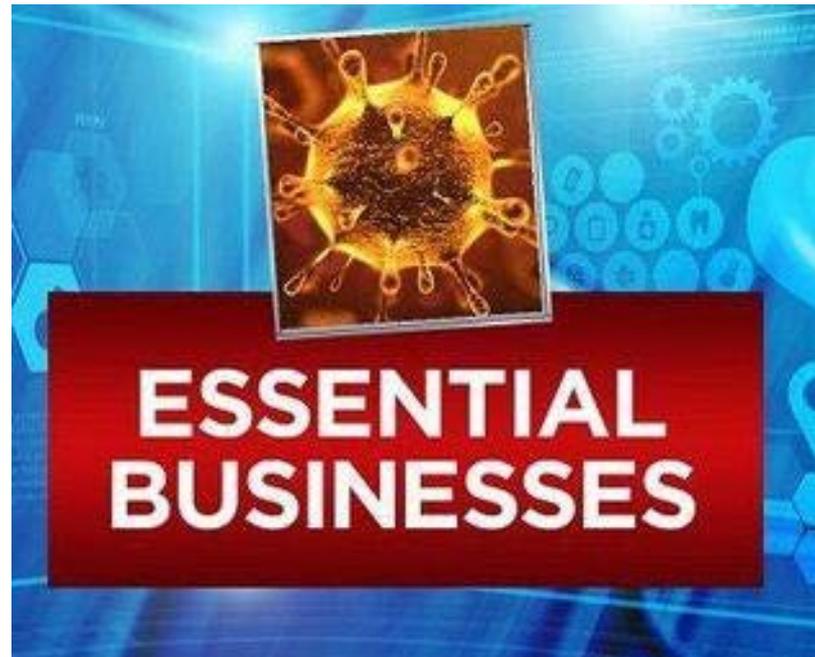
## What about H-2A housing and quarantine?

- Employers of H-2A workers must provide free housing under the DOL regulations. If one or more employees develops COVID-19 symptoms, it is essential to remove them from that housing and undergo cleaning protocols immediately. Employers should follow local public health guidelines, and CDC guidance for employers.



# LABOR UPDATES

UNIONS WANT IN AS “ESSENTIAL BUSINESSES” TOO!



# LABOR UPDATES: UFW OPEN LETTER TO AG

- On March 17<sup>th</sup>, the UFW issued an “Open Letter” to ag employers listing demands for the industry. The UFW makes it clear its real goal - to collectively bargain for the entire industry it has never been able to organize.
- In terms of what to expect, we have no playbook for this one, not for pandemics and not for the supply chain demands that will be placed upon the Industry, and not from the demands the Industry may face from employees.
- UFCW is already touting victories in grocery with immediate wage increases and additional paid leave so let’s get prepared.
- Remember:
  - California has regulations on access in the fields – don’t give outsiders the run of your place.
  - Supervisors should be trained and provided materials on what to do when unwanted guests show up.
  - Plan for and expect work stoppages.

# LABOR UPDATES: UFW OPEN LETTER TO AG



## UNITED FARM WORKERS

National Headquarters: La Paz • PO Box 62 • Keene, California 93531  
Telephone: (661) 823-6105 • email: [execoffice@ufw.org](mailto:execoffice@ufw.org) • [www.ufw.org](http://www.ufw.org)

March 17, 2020

Dear agricultural employer:

We continue monitoring breaking developments over coronavirus COVID-19 on local, state, national and international levels. We are following directives issued by the Centers for Disease Control and Prevention ([www.cdc.gov](http://www.cdc.gov)), the World Health Organization ([www.who.int](http://www.who.int)) as well as all guidelines put in place by state and local agencies. We realize the situation is fluid and we are in constant contact with these organizations.

By joining together can we better combat and mitigate this crisis that the experts predict will only worsen. By working together can we ensure our industry is adopting best health and safety practices as part of a proactive approach to preventing the spread of germs, containing the virus when identified and ensuring all farm workers as well as the food supply chain itself are safer. Some of those best practices are outlined below.

But all of us must do more during this period of genuine crisis. So it is imperative that we all take further proactive steps to ensure the safety of farm workers, protect buyers and safeguard consumers. Agricultural employers have a duty to help all farm workers feel confident as they address their own health needs as well as those of immediate family members. So we are also calling upon you to consider taking the following steps:

- Extend state-required sick pay to 40 hours or more and remove the caps on accruing sick pay
- Eliminate the 90-day waiting period for new farm workers to be eligible for sick pay
- Eliminate the practice of asking for doctors' notes when workers take sick time
- If workers or immediate family members (spouses or children) are identified as infected with COVID-19, those employees should be placed on paid administrative leave for the duration of their illnesses
- Offer daycare assistance and flexibility since schools have closed in many communities

**We have started with our own house. The United Farm Workers is individually contacting each unionized employer with urgent appeals to take these steps. We ask you to do the same.**

To ensure *all* workers are provided training and written information on best practices to keep them healthy during this time the following are some practices we ask you to implement:

- Frequent and thorough hand washing with soap and water (front and back for 20 seconds or more)
- Encourage workers to stay home if they are sick
- Encourage avoiding touching eyes, nose or mouth with unwashed hands.
- Encourage respiratory etiquette—covering mouth when coughing or sneezing into elbows
- Cleaning and disinfecting frequently touched surfaces multiple times daily.
- Have an emergency plan in place

We encourage you to take advantage of available resources where you can find flyers, pamphlets, tips and guidelines for keeping the food supply chain safe for all workers, retailers and consumers. We thank you for your cooperation and commitment to keeping farm workers safe.

# CHEAT SHEET

## ACCESS CHEAT SHEET UNDER THE ALRA

ANY PAPER GIVEN TO YOU BY A UNION OR AN ALRB AGENT MUST BE IMMEDIATELY DELIVERED TO THE OFFICE!

### ☛ TIME WHEN ACCESS MAY OCCUR:

- One hour before work
- One hour after work
- During Lunch

DURING ACCESS TIMES, SUPERVISORS MUST MOVE TO A NEUTRAL AREA AWAY FROM WHERE ORGANIZERS ARE ADDRESSING WORKERS!

### ☛ NUMBER OF UNION ORGANIZERS PERMITTED:

- If the crew is 30 workers or fewer: 2 organizers
- If the crew is more than 30: 1 additional organizer for each increment of 15 workers.

### ☛ Example: A crew of 46 workers: 4 organizers

- Organizers must wear identification badges showing their name and their union.
- Organizers must identify themselves if a supervisor requests it.
- Organizers may not disrupt operations. SPEECH ALONE IS NOT A DISRUPTION.

### ☛ DOCUMENT ALL VIOLATIONS:

- DATE AND TIME
- ORGANIZER'S NAME
- NATURE OF VIOLATION

### ☛ REMEMBER... YOU CANNOT... (TIPSS)

Threaten • Interrogate • Promise • Spy • Solicit grievances

# CHEAT SHEET

## What to do if Unwanted Guests Show Up | Non-Governmental Access

### CONSPICUOUS POSTING OF PREMISES:

1. NO TRESPASSING
2. Authorized personnel only! All visitors check in at office for escort into high-hazard ag operation.
3. Food safety regulations in effect. Authorized personnel only.

### INTERCEPT THEM AS SOON AS POSSIBLE:

1. Instruct security to stop them at the gate (or point of ingress) before they get into the worksite.
2. If they are already in the field, stop them immediately before they can go any further.
  - a. Train all supervisors/foremen/management employees to identify and stop all non-employees that are seen wandering at worksites uninvited.
  - b. If foremen/supervisors provide any consent for them to continue, the Company may be waiving any claims for trespassing it may have!

### CONFIRM THEIR IDENTITIES & DOCUMENT YOUR INTERACTION:

1. Ask for business cards to confirm identities, and call management immediately to ensure their presence is not permitted.
2. Get as much information as you can: names of the trespassers, organizations they represent, purpose of their visit, who invited them onto the property, etc.
3. Take pictures.
4. Record the make, model, and license plate numbers of their cars with pictures or in writing.

### STOP THEM FROM ACCESSING THE WORKSITE IMMEDIATELY:

1. If they are stopped at the gate, inform them that they have no right to access the Company property, and do not let them in.
2. If they are found already on the worksite, escort them to the parking lot (or point of egress) to ensure they actually leave.

### NOTE: If the Company provides housing, the CRLA or other labor organizations can be allowed access if given permission from the employees, even during work hours!

The Company should have a non-discriminatory housing policy limiting when non-employees can be present. Stop and question any non-employee who is wandering unaccompanied on the Company's premises.

# CHEAT SHEET

## WORK STOPPAGES

### 1. Employees Have Right to Strike Over Working Conditions:

- a. DO NOT threaten discipline or discharge.
- b. Employees do not have the right to threaten others or to destroy property.

### 2. Response to Work Stoppage: Primary Objective - Back to Work:

- a. DO NOT fire or threaten to fire anyone.
- b. DO NOT overreact: Don't get emotional!
- c. DO Notify management - Emergency Call List.
- d. DO Get as much information as you can - open the line of communication between strikers and management: What are the grievances?
- e. DO Attempt to persuade employees to go back to work.
- f. If you cannot get them all to work, get the strikers to leave the work site.
  - Do not engage further ... "No Confrontations"
  - Note the time they stopped working.
- g. DOCUMENT ... DOCUMENT... DOCUMENT actions of employees: e.g. misconduct, refusal to leave, damage to materials or equipment.
- h. Thank the remaining crew and continue production.

# SILENCE IS NOT GOLDEN



# SILENCE IS NOT GOLDEN

- In this time of uncertainty employers need to be the “rock”...the “champion” of employee rights and protections in the workplace, the champion of their families and the champion of their futures.
- PUT YOUR PEOPLE FIRST! Talk openly and often about protecting our people:
  - ✓ Washing hands,
  - ✓ Wearing PPEs,
  - ✓ Staying at home if you are sick,
  - ✓ Self-reporting if you are sick,
  - ✓ Avoid touching your face and eyes,
  - ✓ Covering your mouth when coughing and sneezing, and
  - ✓ Social distancing.

## SHOW IT!!

- ✓ We will...step up sanitation
- ✓ We will...step up education
- ✓ We will...step up communication; and
- ✓ We will step up with enhanced implementation...DAILY!!!



# SILENCE IS NOT GOLDEN

## TOGETHER WE WILL:



- Keep our families working and safe
- Keep our customers throughout the world fed
- Keep our communities alive and well

# RIPPED FROM THE HEADLINES...



After talks with the UFCW, Cargill has agreed to give employees at their meatpacking facilities a \$2/hour emergency pay increase during the COVID-19 pandemic.

## SAVE MART SUPERMARKETS

- All grocery workers will start receiving an extra \$2.50 per hour, retroactive to March 8, for all hours worked up to 40 hours per week.
- Anyone working beyond 40 hours per week will earn an extra \$3.50 per hour for all hours worked over 40 hours per week.



- Maple Leaf Foods: Employees will receive additional \$80 per week in premium pay.
- Campbell's Soup: Employees will receive a \$2 per hour pay increase during the outbreak.
- National Beef: Employees are receiving a \$2 per hour pay increase between March 16 through May 10, 2 weeks paid leave if they are required to quarantine, waiver of co-pays for coronavirus medical care, and the ability to take time off for any coronavirus-related absences.

# WORKPLACE FAQs ON CORONAVIRUS



# What to Do With Sick Employees?

## Can I send Employees Home?

- The CDC states that employees who exhibit symptoms of influenza-like illness at work during a pandemic should leave the workplace. The Equal Employment Opportunity Commission (EEOC) confirmed that advising workers to go home is permissible and not considered disability-related if the symptoms present are akin to the COVID-19 coronavirus or the flu. Remember if you send an employee home, in California you have to compensate for Reporting Time Pay.

## Can I take my employee's temperature?

- The answer to this question has changed, as the EEOC has stated that given “community spread” of COVID-19, employers may take an employee's temperature. HOWEVER—this exposes the employer to liability. A temperature does NOT automatically mean the employee has COVID-19 AND in California, employers must issue a notice compliant with the California Consumer Privacy Act (CCPA) BEFORE testing. A best practice would be to send the employee home.

## If An Employee Tests Positive, What Do I Do?

- Send the employee home for the 14-day quarantine period, along with employees who worked closely with that employee.
- Maintain all information about employee illness as a confidential medical record in compliance with the ADA.
- Per the CDC:
  - Clean surfaces with a detergent and soap and water. For disinfection, diluted household bleach solutions, alcohol solutions with at least 70% alcohol, and most common EPA-registered household disinfectants should be effective.
  - Cleaning staff should wear disposable gloves and gowns for all tasks in the cleaning process, including handling trash.
  - Gloves and gowns should be compatible with the disinfectant products being used.

# Is A COVID-19 Infection a Recordable Illness on the OSHA 300 Log?

- **Per OSHA Guidance on COVID-19:**
  - Employers are required to record instances where:
    - The case is a confirmed case of COVID-19;
    - The case is work-related; and
    - The case involves one or more of the general recording criteria (e.g. medical treatment beyond first-aid, days away from work).



# Cal/OSHA Safety Health And Guidance

- Cal/OSHA released COVID-19 Guidance regarding Infection Prevention for Agricultural Employers and Employees.
  - The guidance is prominently featured on the Cal/OSHA website.
- The Guidance directs that employers must provide training on:
  - What COVID-19 is and how it is spread;
  - Preventing the spread of COVID-19 if you are sick;
  - Symptoms of COVID-19 and when to seek medical attention
  - Information from California's COVID-19 Response Webpage for additional resources. (<https://covid19.ca.gov/>)
  - The importance of handwashing with soap and water per CDC guidelines.

California Department of Industrial Relations  
Division of Occupational Safety & Health  
Publications Unit



## **SAFETY AND HEALTH GUIDANCE**

### **COVID-19 Infection Prevention for Agricultural Employers and Employees**

# Cal/OSHA Safety Health And Guidance (Continued...)

- The Guidance also provides that IIPP administrators should develop procedures to prevent the spread of COVID-19 including:
  - Immediately sending employees with acute respiratory symptoms home or to seek medical treatment;
  - Establish procedures to notify local health officials upon learning that someone has a COVID-19 infection.
  - Encourage sick workers to stay home by not punishing them for missing work.
  - Make hand-washing stations more readily available and encourage their use.
  - Establish procedures to routinely clean and disinfect commonly touched surfaces and objects (e.g., water containers, steering wheels, shared tools, shared work stations, door handles, seat belts, insides of toilet facilities) throughout the workday



# Unanswered Question: Is COVID-19 a Workers' Comp. Injury?

- We have seen guidance from other associations stating that if an employee contracts COVID-19, it is not a covered claim under Workers' Compensation.
- **HOWEVER**, the California Labor Workforce Development Agency is taking the opposite position, and is telling employees who think they contracted COVID-19 at work to file for workers' compensation benefits. See guidance from the LWDA below:



<b>Workers' Compensation</b>	<p>If you are 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.</p>	<p>Benefits include temporary disability (TD) payments, which begin when your doctor says you can't do your usual work for more than three days or you are hospitalized overnight. You may be entitled to TD for up to 104 weeks. TD stops when either you return to work, your doctor releases you for work, or your doctor says your illness has improved as much as it's going to.</p>	<p>TD generally pays two-thirds of the gross wages you lose while you are recovering from a work-related illness or injury, up to maximum weekly amount set by law. In addition, eligible employees are entitled to medical treatment and additional payments if a doctor determines you suffered a permanent disability because of the illness.</p>	<p><a href="#">Learn more about your eligibility for Workers' Compensation benefits</a></p>	<p><a href="#">File a Workers' Compensation claim</a></p>
------------------------------	---	---	--	---	---

# Wage and Hour Traps & Choices

- These heightened sanitation standards, require extra time, especially with the workers having to “social distance” or be 6 feet apart when they wash or wait in line to wash their hands?
  - Make it clear this time is compensable or “on the clock”.
  - Add 2 minutes to each duty free rest break. (paid)
  - Add 5 minutes to each duty free meal break. (unpaid)
  - Add hand washing stations to keep from diminishing from productivity.
- What about workers compensated on a piece-rate basis?
  - All time not engaged in the piece-rate activity must be separately captured and accounted for as non-productive time.
  - Other non-productive time is paid at least at minimum wage.
  - Rest break time is paid at the average hourly rate.

# Wage and Hour Traps & Choices (Continued)

## How to Inform Employees?

### California Required Notice:

<b>NOTICE TO EMPLOYEE</b> <i>Labor Code section 2810.5</i>	
<b>EMPLOYEE</b>	
Employee Name:	<input type="text"/>
Start Date:	<input type="text"/>
<b>EMPLOYER</b>	
<input type="text"/>	

### Federal Required Notice:

**Migrant and Seasonal Agricultural  
Worker Protection Act**

**U.S. Department of Labor**  
Wage and Hour Division



OMB NO: 1235-0002  
Expires: 08/31/2020

<b>Worker Information—Terms and Conditions of Employment</b>	
1. Place of employment:	<input type="text"/>

# Wage and Hour Traps & Choices (Continued)

## How to Inform Employees? Part of the California Notice:

### PAID SICK LEAVE

Unless exempt, the employee identified on this notice is entitled to minimum requirements for paid sick leave under state law which provides that an employee:

- a. May accrue paid sick leave and may request and use up to 3 days or 24 hours of accrued paid sick leave per year;
- b. May not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and
- c. Has the right to file a complaint against an employer who retaliates or discriminates against an employee for
  1. requesting or using accrued sick days;
  2. attempting to exercise the right to use accrued paid sick days;
  3. filing a complaint or alleging a violation of Article 1.5 section 245 et seq. of the California Labor Code;
  4. cooperating in an investigation or prosecution of an alleged violation of this Article or opposing any policy or practice or act that is prohibited by Article 1.5 section 245 et seq. of the California Labor Code.

The following applies to the employee identified on this notice: *(Check one box)*

- 1. Accrues paid sick leave only pursuant to the minimum requirements stated in Labor Code §245 et seq. with no other employer policy providing additional or different terms for accrual and use of paid sick leave.
- 2. Accrues paid sick leave pursuant to the employer's policy which satisfies or exceeds the accrual, carryover, and use requirements of Labor Code §246.
- 3. Employer provides no less than 24 hours (or 3 days) of paid sick leave at the beginning of each 12-month period.
- 4. The employee is exempt from paid sick leave protection by Labor Code §245.5. (State exemption and specific subsection for exemption): \_\_\_\_\_

# WARN ACT NOTICE



# WARN Act in COVID-19 Crisis: Governor Provides Relief From 60-Day Notice Requirement

- As a result of the recent executive orders and proclamations to either “shelter-in place” or to shutdown businesses in their entirety, employers are advised of their legal responsibilities under the **Cal-Warn Act**. This law is the State corollary law to the **Federal Warn Act** with regard to business closures and mass layoffs requiring 60 days written notification to workers and government organizations.
- If your organization employed 75 or more persons within the preceding 12 months, you will be covered by this **Act**. The term “layoff” means a separation from a position for lack of funds or lack of work. The term “mass layoff” means a layoff during any 30-day period of 50 or more employees at a covered establishment. Lastly, the term “termination” is a cessation or substantial cessation of industrial commercial operations in a covered establishment.

# WARN Act in COVID-19 Crisis: Governor Provides Relief From 60-Day Notice Requirement

- For those of you who have utilized the an Employee Handbook, where the acknowledgement page that there is language indicating that your agricultural employees are engaged in seasonal employment and were hired with the understanding that their employment was seasonal and temporary. You are exempt from the provisions of the **Warn Act**.
- If your business operation does not qualify for this exemption, you are generally required to give 60 days written notification before any of the above acts take effect.
- However, as a result of the recent COVID-19 pandemic, the Governor's office provided guidance and issued an executive order clarifying how mass layoffs due to COVID-19 orders may be handled. According to the proclamation, **Cal-Warn** still applies, but the notice requirement has been relaxed to be given "as soon as practicable" not the usual 60 days of written notification. Notices still must include a basis for reducing the notification period, including reference to being due to "business circumstances that were not reasonably foreseeable as of the time of the notice would have been required". Notices must also direct employees that they may be eligible for unemployment insurance and provide a link to <http://www.labor.ca.gov/coronavirus2019>.
- It is expected that the Labor Workforce Development Agency will be issuing a guidance on **Cal-Warn** by the end of March 2020.



A DIVISION OF

**DOWLING | AARON**  
INCORPORATED  
ATTORNEYS AND COUNSELORS AT LAW



# Questions?

Copyright Notice and Disclaimer: This PowerPoint presentation was created by The Saqui Law Group, a division of Dowling Aaron Incorporated, and is ©2020. All rights reserved. The information contained in this PowerPoint presentation is provided solely for the general interest of clients and friends of The Saqui Law Group. This information should not be relied upon or construed as legal advice and is not a substitute for obtaining legal advice from an attorney licensed in your state. We assume no liability or responsibility for any errors or omissions in the content of this PowerPoint presentation. The use of our PowerPoint presentation is not intended to and does not establish an attorney-client relationship. Please do not send us confidential information via e-mail without first obtaining permission to do so from one of our attorneys. Questions regarding this PowerPoint presentation may be sent to [administrator@laborcounselors.com](mailto:administrator@laborcounselors.com) or Client Services at 916-782-8555.

Roseville Office:  
1410 Rocky Ridge Drive  
Suite 330  
Roseville, CA 95661  
Tel: (916) 782-8555  
Fax: (916) 782-8565

[www.laborcounselors.com](http://www.laborcounselors.com)

Fresno Office:  
8080 North Palm  
Avenue, Third Floor  
Fresno, CA 93711  
Tel: (559) 432-4500  
Fax: (559) 432-4590