




Protecting Worker Safety as More People Return to Work

What Do Workers Need?
What Do Unions Bargain For?

WE ARE IN
THIS
TOGETHER

- One Unsafe Worker Makes All Workers Unsafe
 - One Unsafe Worker Makes All Customers & Clients Unsafe
 - One Unsafe Employer Makes All Employers Unsafe


 - We Must Encourage Full Cooperation Of Employers, Unions, Workers, And Any Customers/Clients
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“BEST PRACTICES”

- WHAT?

- We Aim To Keep Workers & Their Families As Safe As Possible
- We Aim For “Best” Practices, Not Just “Useful” Practices
- We Aim For No Disease And No Death
- We Want Union Sectors To Be Cleanest & Safest Anywhere

- HOW?

- By Listening Closely And Learning From Workers
 - By Listening Closely And Learning From Health Care Experts
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BEFORE RE-
OPENING:
GOVERNOR'S
STAGE 2
ORDER

- Union Should Participate With Employer As Employer:
 - Performs Risk Assessment & Implements Protection Plan
 - Trains Workers On Limiting Spread, Including Knowing Symptoms & Staying Home If Present
 - Implements Individual Control Measures & Screening
 - Implements Disinfecting Protocols
 - Implements Physical Distancing Guidance

STATE AND LOCAL “ROADMAPS”


- State of California has issued Resilience Roadmaps describing safety/health procedures for each industry opening now, at
 - www.covid19.ca.gov/roadmap
- L.A. County “Roadmap to Recovery,” as example, at
 - <http://publichealth.lacounty.gov/media/Coronavirus/docs/HOO/RoadmapToRecovery.pdf>

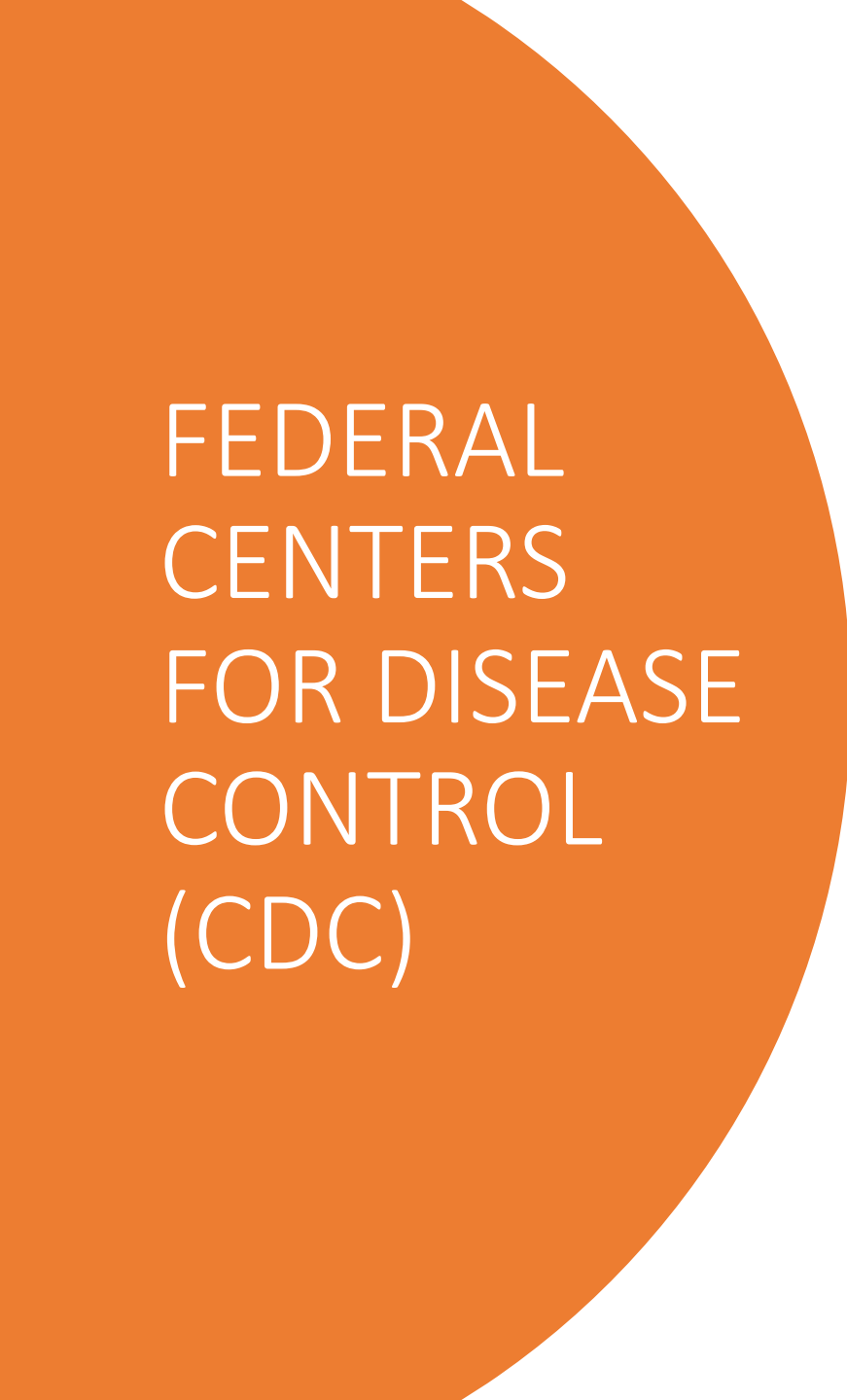
THE UNION'S ROLE

- Gather The Facts, Develop The Expertise
- Meet With Workers To Learn Their Concerns
- Engage In On-going 'Bargaining' With Employers To Insure 'Best Practices'
- Memorialize All Agreements In Writing
 - COVID -19 Pandemic Side Letter To MOU's And CBA's
 - Spell Out 'Best Practices'


APPLICABLE LAWS

- CDC Order
 - Federal OSHA
 - CalOSHA
 - California Labor Code 2802


 - But Do Not Depend On The Laws And Enforcement Of The Laws
 - We Have To Depend On Workers & Their Unions To Enforce Safety Standards
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FEDERAL CENTERS FOR DISEASE CONTROL (CDC)

- CDC has issued general guidance on how employers should improve workplace safety
 - BUT
 - White House has required CDC reversals on policies (e.g., asymptomatic workers may work)
 - White House has stopped publication of CDC paper for employers on return to work standards
 - White House “task force” has issued advice directly contradictory to CDC advisories
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FEDERAL OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION (OSHA)


- Employers Must Provide Workplaces “free of hazards that are causing or can cause serious physical harm or death.”
 - OSHA should be setting standards
 - BUT
 - OSHA has NOT setting workplace standards to protect workers from COVID-19
 - OSHA has REDUCED standards for reporting workplace COVID-19 cases
 - OSHA has done almost no on-site inspections or enforcement at all
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CALIFORNIA OSHA

- CalOSHA has long been underfunded & understaffed
- CalOSHA has NOT issued any COVID-19 standards that employers must follow
- CalOSHA has instead provided advisories as to what General Standards apply:
 - 1. some employers must comply with Aerosol Transmissible Diseases (ATD) standards
 - 2. employers must comply with preventative measures & training as part of Injury & Illness Prevention Program & must protect workers from exposure if COVID-19 is workplace hazard
 - 3. washing facilities must be present at work
- But currently unknown whether CalOSHA is doing any on-site inspections or enforcement



LABOR CODE 2802

- The Employer Must Reimburse For Equipment Necessary To Do The Work
 - Nothing New Here, But Needs Some Re-thinking If Worker Must Have Masks, Gloves, Hand Sanitizer, And Other Personal Protective Equipment
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BARGAINING ISSUES

1. Personal Protective Equipment
2. Social Distancing
3. Changes In Operations
 - Retail
 - Manufacturing
 - Offices
4. Testing
5. Refusal To Work Over Safety Issues
6. Protecting Workers Who Work From Home

EQUAL BENEFITS FOR EQUAL WORK: NO TWO-TIER WORKPLACES



1. PERSONAL PROTECTIVE EQUIPMENT (PPE)

- Masks
- Gloves
- Hand Sanitizer
- Hand Washing Stations
- Gowns Or “Onesies”
- Plastic Protective Face Shields
- Plexiglass Protective Work-station Shields
- Deep Cleaning Supplies


- ISSUES: WHO PAYS & WHO ENFORCES

2. SOCIAL DISTANCING

- SOCIAL DISTANCING MAY DIFFER DEPENDING ON CIRCUMSTANCES
 - Enclosed Office Spaces
 - Schools, Libraries, Public Facilities
 - Stores & Retail Outlets
 - Outdoor Construction
 - Outdoor Occupations



3. CHANGES IN OPERATIONS


- Staggered Shifts
 - Cafeteria Or Lunch/ Rest Break Seating Rules
 - Rest Room Usage/Cleaning
 - Elevators & Staircases
 - Lobbies & Other Shared Areas
 - Parking Areas (Enclosed & Open)
 - Shared Use Of Offices
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CHANGES IN OPERATIONS: RETAIL AS EXAMPLE

- Limiting Number Of Customers In Store
- Constant Cart Cleaning
- Mandatory Masks & Gloves
- Hands-free Payment Systems, Soap & Towel Dispensers, Timecard Systems
- Mandatory Social Distancing Of All Customers & Workers
- Staggered Cash Registers & Check Out Lines
- Workers Who Circulate To Make Sure All Rules Followed
- Deep Cleaning Supplies And Stations & Workers Using Them
- Implement Pick Up & Delivery Of Products

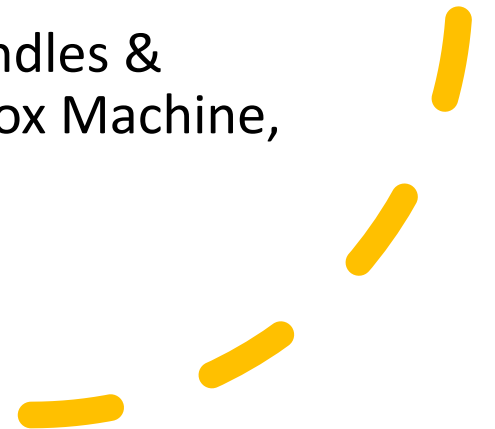
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CHANGES IN
OPERATIONS:
MANUFACTURING
AS EXAMPLE

- Close Breakrooms
 - Create Spacious Outdoor Break Areas
 - Plastic/Etc. Barriers Between Work Stations
 - Distance Tables, Chairs To Discourage Social Contact
 - Do Paperwork Digitally If Possible
 - Clean All Equipment & Have Cleansing Material Close By
 - Re-vamp Heating/Ventilating/Air Conditioning Systems As Necessary
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CHANGES IN OPERATIONS: OFFICES AS EXAMPLE

- Re-position All Desks, Chairs, & Office Furniture To Encourage Social Distancing
- Replace As Much Paper As Possible With Digital Processing
- Use Cell Phones & Email, Not Paper Or Desk Phones
- Install Plastic/Etc. Barriers Between Desks & Work Areas
- Widen Aisles To Allow Distancing
- Modify Heating/Ventilation/Air Conditioning As Necessary
- Reconfigure Parking Areas For Distancing
- Minimize Necessity Of Touching Door Handles & Commonly Shared Office Equipment (Xerox Machine, Staplers, Pens, Etc.)



4. TESTING

- Thermal Temperature Testing
 - What Guidelines To Use?
 - Who Pays?
 - Who is Tested?
 - Who does the Testing?
 - Do Union Hiring Halls Or Referral Systems Take This Liability On?
- Same Issues for Swab-testing For Coronavirus
- EMPLOYER PAYS FOR TESTING TIME EXPENDED

WHAT IF A
WORKER HAS
TEMPERATURE
OR TESTS
POSITIVE?

- No Entrance To Workplace Allowed
- Cost Of Diagnosing
- Cost Of Treatment
- Return To Work Rules



5. WHEN CAN WORKER REFUSE TO RETURN TO WORK

- OSHA & CalOSHA Standards For Refusing To Work
- Arbitral Standards For Refusing To Work
- “High Risk” Worker’s Right To Work From Home And/Or Not Return To Work
 - May be eligible for continuing unemployment benefits because work is not sufficiently safe as to be “suitable”
- What Is Union’s Role If Worker Does Not Or Cannot Return To Work

6. PROTECTING WORKERS WORKING AT HOME

- ENFORCING FLSA & CALIFORNIA WAGE/HOUR LAWS FOR WORK FROM HOME
 - Overtime: 1.5x 8 To 12 Hours, 2x After 12 Hours In A Work Day
 - Rest Breaks: 10 Paid Minutes Every 4 Hours
 - Meal Periods: 30 Unpaid Minutes In 8 Hour Shift



INTERACTION OF WORK & NEW LAWS

- Return To Work Order Vs. Extended Family Leave Pay To Care For Children
 - During School Year
 - During Summer Months
- On Family First Sick Leave Vs. Return To Work Order
- On Extended/Increased Unemployment Benefits Vs. Return To Work Order





ADDITIONAL
LAWS TO
CONSIDER

WORKERS' COMPENSATION
"PRESUMPTION" OF WORK-
RELATED

NOTICE POSTING OF NEW LAWS
SO EMPLOYEES SEE THEM

ANTI-DISCRIMINATION LAWS:
EEOC & DFEH

WORKERS' COMPENSATION “PRESUMPTION”

- It Will Be “Presumed” That Work Caused COVID-19, If
 1. Worker Tested Positive Or Diagnosed With Covid-19 Within 14 Days After Performing Work For Employer; And
 2. The Date Work Was Performed Was Between March 19, 2020, Through July 5, 2020; And
 3. Place Of Employment Was Not At Worker’s Home; And
 4. Diagnosis Was By Licensed California Physician and Confirmed by a Test Within 30 Days.
- Employer Has Just 30 Days To Rebut And Must Then Carry Burden Of Proof Of Showing It Was Not Caused By Work

WORKERS' COMPENSATION (CONT.)

- Worker Is Entitled To:
 1. Temporary Disability Payments (T.D.) When Not On Sick Leave Or Extended Family Leave
 2. All Medical Expenses, Including Diagnosis, Testing & Treatment
 3. Permanent Disability Award (P.D.)
- **IMPACT ON UNION-EMPLOYER JOINTLY ADMINISTERED HEALTH & WELFARE FUNDS**
 - No Different Than Any Other Claim Review


NOTICE POSTING

- Employer Must Inform Workers of Certain Rights, Including by Notice Posting
 - Summary of CalOSHA Workplace Laws
 - Summary of Family First Paid Sick Leave and Expanded Family & Medical Leave
 - Summary of California Supplemental Paid Sick Leave for Food Sector Workers & First Responders
- Union May Bargain for Further Notice by Email, Website, Postal Mailing

ANTI- RETALIATION PROTECTION

- Employer May NOT Retaliate Against Worker for Reporting Unsafe Work Conditions
 - Worker's complaint may be informal, not just to CalOSHA
 - Worker need only have good faith belief that workplace is unsafe
- Worker may file complaint w California Labor Commissioner, or file lawsuit in Court
- Worker may be entitled to reinstatement and back pay

ANTI- DISCRIMINATION LAWS (EEOC & DFEH)

1. An Employer May Ask If Worker Has Symptoms – Fevers, Chills, Cough, Shortness Of Breath, Sore Throat
 2. An Employer Must Keep Answers Confidential
 3. Employer May Take Temperature
 4. Employer May Do Mandatory Test
 5. Employer May Require Worker With Symptoms To Leave Work
 6. CDC Says Worker Should Leave Workplace If Symptomatic
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ANTI- DISCRIMINATION (CONT.)

7. Employer May Log Info & Keep In Medical File Separate From Personnel File

8. Employer May Inform Public Health Agency Of Results For Contact-tracing

9. Labor Contractor May Tell Employer



ANTI-DISCRIMINATION (CONT.)

- Hiring Practices
 - After Offering Job, Employer May Take Temperature
 - After Offering Job, Employer May Do Testing
 - Cannot Do It Discriminatorily (Only 'High Risk', Or Only Pregnant Women, Or Only Asian, Etc.)
 - Employer Can Withdraw Job Offer If Worker Has COVID -19


ANTI-DISCRIMINATION (CONT.)

- Reasonable Accommodation For ‘High Risk’/Partially Disabled Workers
 - Workers May Request One-way Aisles, Plexiglass Dividers, Barriers
 - Workers May Request Modified Shifts/Hours
 - Workers May Request Modified Job Duties
 - Workers May Request Temporary Transfers
- Reasonable Accommodation Is A Process
- Employer Must Accommodate Unless It Imposes “Undue Business Hardship”


ANTI-DISCRIMINATION (CONT.)

- No Harassment In COVID-19-related Plan Implementation Or Action Based On
 - Race
 - Color
 - Creed
 - National Origin
 - Gender
 - Gender Preference
 - Mental Or Physical Disability
 - Or Any Other Protected Category

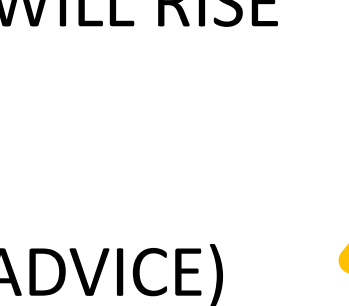


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OTHER BARGAINING ISSUES TO CONSIDER

- Hazard Pay
 - Vacation Accrual
 - Sick Leave Accrual
 - Health Care Coverage For Part-timers
 - Short Shifts
 - Overtime Bonuses
 - New Transportation Modes & Parking Costs - Supplemental Pay
 - Everything In Contract Is Subject To Side Letter Waivers & Modifications
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OUR ULTIMATE GOALS

- NO COVID-19 SICKNESS OR DEATH
 - PROTECTING WORKER SAFETY AND HEALTH
 - THE CHALLENGE HAS JUST BEGUN
 - MORE ISSUES WILL CONTINUE TO ARISE
 - BE VIGILANT, BE COMMITTED, BE SAFE
 - WE ARE IN THIS TOGETHER, WE WILL RISE OR FALL TOGETHER
 - (IGNORE STUPID UNINFORMED ADVICE)
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ADDITIONAL RESOURCES

- www.unioncounsel.net
- www.covid19.ca.gov
- www.cdc.gov
- www.kff.org
- www.lohp.org
- www.nelp.org

