UCON is providing the following FAQ, which has been contributed to and reviewed by legal counsel, to address the most common and critical questions we are hearing from our members in this unprecedented time of crisis. Please note that this is general information and is not intended to address all situations or provide comprehensive legal guidance. Every business needs to examine its structure and processes, and if necessary, consult with legal counsel for advice on your specific situation.

The situation is constantly changing – UCON will make every effort to update this information as quickly as possible. Governor Newsom issued a statewide Executive Order with slightly different provisions from the Shelter in Place orders. Additionally, more restrictive SIP Orders have been issued for some counties and cities. In informal statements, the Governor’s Office has indicated that local governments may enforce stricter requirements than the statewide Executive Order; therefore, we recommend continuing to check with local authorities on projects/work that are not clearly exempt under the state order. Please continue to check back for updates to this document and refer to the revision date at the bottom.

NOTES:

Shelter In Place Orders
Please be advised that different Shelter in Place Orders contain differing terms and conditions. The questions below relate to the orders that at this time provide for exemptions for certain construction activities. Please review the orders that apply for your geographic region and the region of any job where you are working. As well, please note that any of the orders may be updated at any time so make sure to check periodically to see if the orders have been changed.

In general, the Shelter in Place orders prohibit gathering of individuals outside of the home, with certain exceptions for essential activities, essential travel, and to perform work for essential businesses or government, or to perform essential infrastructure work.

Collective Bargaining Unit and Non-Collective Bargaining Unit Employees
In some situations, there are differences between handling hourly union employees, who are part of the collective bargaining unit, and other employees who are not covered by a collective bargaining agreement (CBA). In those cases, we have differentiated the answers.

DISCLAIMER:
This set of FAQ is intended to provide information about the COVID 19 pandemic, and legal issues relating to it. It should not be relied upon as legal advice. Please consult an attorney if you have legal questions or concerns.
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WORK PROCEDURES

1. **How do we determine if our projects or work type fall under “essential” work or are considered “non-essential?”**

**Executive Order** - Governor Newsom issued a full list of essential critical infrastructure work, outlining construction and construction suppliers as an essential service during the statewide Stay at Home Order. You can see the full list [here](#) – look under Community-Based Government Operations and Essential Functions (page 10-11). All construction is now considered to be “essential” for purposes of the Executive Order.

**Shelter in Place Orders** - Refer to the specific Order for the county/county’s in which your work is being performed for that project. County information can be accessed through a [central state website](#). See UCON’s Essential Infrastructure Agency/Face-Covering Ordinance Matrix for more details and explanation on each county’s provisions – download it from UCON’S [COVID-19 web page](#). As of May 4, 2020, the Shelter in Place Orders for the six Bay Area counties and the City of Berkeley were amended to classify all construction as essential, but subject to certain safety protocols.

2. **How does the statewide Executive Order interact with county or city Shelter in Place Orders?**

As of May 4, 2020, the statewide Executive Order and the Shelter in Place Orders issued by the six Bay Area counties and the City of Berkeley allow all types of construction; differences between the orders are important principally because local orders may require compliance with social distancing and construction safety protocols.

The language utilized by most of the amended Shelter in Place Orders states in the event of a conflict the most restrictive provision controls:

*This Order adopts in certain respects more stringent restrictions addressing the particular facts and circumstances in this County … Where a conflict exists between this Order and any state public health order related to the COVID-19 pandemic, the most restrictive provision controls. Consistent with California Health and Safety Code section 131080 and the Health Officer Practice Guide for Communicable Disease Control in California, except where the State Health Officer may issue an order expressly directed at this Order and based on a finding that a provision of this Order constitutes a menace to public health, any more restrictive measures in this Order continue to apply and control in this County.*

In his remarks on May 4, 2020, Governor Newsom emphasized that individuals and businesses must comply with stricter requirements under local government orders.

3. **Do the “essential operations” exemptions in the Orders extend to office staff?**

Yes. You and your employees are allowed to perform “Minimum Basic Operations” on-site at your workplace, so long as employees maintain a distance of six feet from one another to the greatest extent feasible. Minimum Basic Operations include the following activities, “provided that owners, employees, and contractors comply with Social Distancing Requirements as defined in this Section, to the extent possible, while carrying out such operations” –

a. “The minimum necessary activities to maintain and protect the value of the business’s inventory and facilities; ensure security, safety, and sanitation; process payroll and employee benefits; provide for the delivery of existing inventory directly to residences or businesses; and related functions.”

b. “The minimum necessary activities to facilitate owners, employees, and contractors of the business being able to continue to work remotely from their residences, and to ensure that the business can deliver its service remotely.”
If your business is located in a county or city where there is an amended Shelter in Place Order, then you must prepare, post, provide employees with, and enforce a Social Distancing Protocol. The Protocol sets forth certain requirements such as maintaining a 6-foot distance between workers. The Protocol must be posted at each facility.

Your employees can also work from home if their jobs are ones that can be performed remotely.

4. **How do we manage our work, delays, etc. with the owners (or GCs if we are a subcontractors)?**

   This is a legally challenging question due to the nature of the circumstances. Regardless of the definitions in the Executive Order and Shelter in Place Order provisions, some General Contractors (GCs) are electing to not perform work on certain projects. We recommend that you follow the guidelines issued by the state and by local counties and municipalities. You will need to discuss the situation with the owner and/or GC. You will also need to discuss with construction legal counsel, as your options and any requirements related to your situation will differ depending on your contract.

5. **What do we do about I-9 verification procedures while Shelter in Place Orders and Social Distancing Requirements are in effect?**

   The Department of Homeland Security (DHS) has provided flexibility in these procedures during this time. Read this [News Release](#) for details on what employers need to do.

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**EXECUTIVE ORDER, SHELTER IN PLACE ORDERS, CONSTRUCTION SAFETY PROTOCOLS, & CONSTRUCTION CONTRACTS**

**TOOLS FOR CONTRACTORS** – See UCON’s [COVID-19 website](#) for Template Legal Notices covering many situations with Owners and General Contractors.

1. **What are “Essential Activities” as defined in the Orders?**

   This is a provision within the various Orders that permits employees to continue to work in the office or otherwise to support the necessary ongoing activities of the business. This provision allows individuals to leave their residences and travel “to perform work for an Essential Business or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations.” (Shelter in Place Order, ¶ 13(a)(iv)). Minimum Basic Operations are described in the response to Question #4 above.

2. **What is Essential Infrastructure?**

   **Executive Order** - Governor Newsom has issued a full list of essential critical infrastructure work, outlining construction and construction suppliers as an essential service during the statewide Stay at Home Order. You can see the full list [here](#) – look under Community-Based Government Operations and Essential Functions (page 10-11).

   **Shelter in Place Orders** - The actual terminology of what constitutes Essential Infrastructure can vary under local Shelter in Place Orders. **Do not make assumptions based on reports or adjacent county Orders.**

   Under the May 4, 2020, Shelter in Place Orders issued by the six Bay Area counties and the City of Berkeley, there are more extensive safety protocols that must be followed on large projects, which are defined as comprising, without limitation, “Essential Infrastructure” projects on which there are “five or more workers at the jobsite at any one time.” For purposes of these local orders, “Essential Infrastructure” includes “airports, utilities (including water, sewer, gas, and electrical), oil refining, roads and highways, public transportation, solid waste facilities (including collection, removal, disposal, recycling, and processing facilities), cemeteries, mortuaries, crematoriums, and telecommunications systems (including the provision of essential global, national, and local infrastructure for internet, computing services, business infrastructure, communications, and web-based services).”
3. **What are the Construction Safety Protocols?**

Amended Shelter in Place Orders issued by six Bay Area Counties (Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara) plus the City of Berkeley opened up some of the restrictions to allow most types of construction, effective May 4, 2020. However, they also require detailed safety protocols to be followed on all construction projects. The amended orders add construction as an “Essential Business,” but “only as permitted under the State Shelter Order and only pursuant to the Construction Safety Protocols listed in” two appendices to the orders. Public works projects also will be subject to the Construction Safety Protocols, unless other protocols are specified by the County Health Officer with authority to administer the order in the location where the work is to be performed. Accordingly, construction can proceed **only** if it complies with the state-wide Executive Order **and** employers at the jobsite follow the specified Construction Safety Protocols.

There are two separate protocols – one for small projects and one for large projects. Contractors need to review these immediately and thoroughly, as the definitions for small projects are extremely limited and the requirements of the protocol are very extensive. In particular, the requirement for a COVID-19 Third-Party Jobsite Safety Accountability Supervisor (JSAS) in addition to a jobsite’s Safety Compliance Officer is a challenging one, and the inclusion of “trade staggering” as part of Social Distancing Requirements may be difficult to implement depending on how the requirement is interpreted. UCON will continue to urgently advocate for a more fair and reasonable approach to the Construction Safety Protocols.

To access the individual orders and appendices, see UCON’s Essential Infrastructure Agency/Face Covering Ordinance Matrix, located under “Trending: Top Requested Info” on our [COVID-19 web page](#).

4. **How do I comply with the requirement in the Construction Safety Protocols for a COVID-19 Third-Party Jobsite Safety Accountability Supervisor (JSAS)?**

Members of UCON’s Safety & Insurance Committee have provided a list of companies who may be available to perform this type of work. UCON is also continuing to advocate for owners to take on this responsibility, as the City of San Francisco has done.

5. **What are Minimum Basic Operations?**

Under most of the Shelter in Place Orders, “Minimum Basic Operations” include the following, provided that employees comply with Social Distancing Requirements as defined in this Section, to the extent possible, while carrying out such operations:

   a. “The minimum necessary activities to maintain and protect the value of the business’s inventory and facilities; ensure security, safety, and sanitation; process payroll and employee benefits; provide for the delivery of existing inventory directly to residences or businesses; and related functions. For clarity, this section does not permit businesses to provide curbside pickup to customers.”

   b. “The minimum necessary activities to facilitate owners, employees, and contractors of the business being able to continue to work remotely from their residences, and to ensure that the business can deliver its service remotely.

6. **What are Social Distancing Protocols?**

The amended Shelter in Place Orders issued on March 31, 2020, which have been amended and continue in effect through May 31, 2020, and orders in other counties that have similar language, require that businesses “prepare, post, and implement a Social Distancing Protocol at each of their facilities at which they are maintaining operations.” An appendix to the amended Orders contains a template Social Distancing Protocol with simple boxes to fill in and check. [Here](#) is a link to the template provided in connection with the Santa Clara County order, which is a typical example.

If you are maintaining operations at a location where there are other contractors or subcontractors, and you
are in a jurisdiction that requires a Social Distancing Protocol, each company with operations onsite must prepare, post, provide its employees with, and implement a Social Distancing Protocol. Copies of the protocol should be handed to employees in the morning before work starts, and forepersons and crew leaders should discuss the requirements of the Social Distancing Protocol with workers as part of jobsite tailgate meetings.

For jobsites without any actual structures, such as grading or freeway projects, you may need to bring in a-frame barricade or signpost to post the Social Distancing Protocol at staging areas, such as where portable restrooms are located. Another option is to send a copy to all employees as a text message or email to their phones, tablets, laptops, etc., so that they each have their own copy.

For purposes of most of the orders, Social Distancing Requirements include:

- maintaining at least six-foot social distancing from other individuals,
- washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer
- covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces
- not shaking hands
- separating work stations or desks by at least six feet
- disinfecting common areas and equipment used by more than one person.

Again, refer to the Social Distancing Protocol contained in the local Order applicable to your jobsite location.

7. **When can a contractor or subcontractor refuse to perform work?**

A contractor or subcontractor can and should refuse to perform construction work:

a. That is not exempted under the most restrictive applicable order.

b. Where it is not possible to comply with Social Distancing Requirements to the extent it is possible to do so.

8. **What should we do if the project owner (and/or GC if we are a sub) directs the project to continue or to resume after having been shut down, but our company refuses due to COVID-19 concerns? What are the potential consequences of our decision and what should we do to protect ourselves?**

This is like any other instance where you are refusing to proceed (such as where you don’t believe it is safe to proceed with your work or because the job site isn’t ready for you to begin work).

a. Check your contract – in particular, look for and read time extension, change order, and suspension of work provisions.

b. Ideally, get a clear directive from the owner (if you are the general contractor) or from the general contractor (if you are a subcontractor) directing that work stop. If you are ready and able to work, you may be able to assert that the work could have proceeded and that any work suspension is a directive/change for which you are entitled to compensation. Use the RFI process to obtain a written directive to stop work.

c. **Submit required notices** (NPC’s etc.), claims documentation, etc.

d. Track costs (set up and use cost codes) and compile costs.

e. Make sure to safeguard work against damage or vandalism (copper thefts, arson, etc.) Security may need to be increased as bad actors may feel that it is easy to steal or cause damage with everyone else sheltering in place.
9. **What if the project owner directs the project to continue or to resume after having been shut down, but our company cannot run the project because my workers refuse to work due to Shelter in Place Orders or COVID-19 health concerns?**

Same as above.

10. **Under the typical Shelter in Place Order, can an owner require a general contractor or a general contractor require a subcontractor to perform work?**

Yes, if the work is permitted under both the statewide Executive Order and any local Shelter in Place Order and the contractor / subcontractor can perform work safely and in compliance with Social Distancing Requirements “to the extent possible.”

11. **What about vendors?**

The list of essential critical infrastructure work under the state Executive Order includes “construction material sources.” Most if not all of the Shelter in Place Orders authorize “Essential Activities,” which include “work… to otherwise carry out activities specifically permitted in this Order.”

Still, vendors may not be willing to open their businesses just to service Essential Infrastructure projects. E.g., a lumberyard legally could deliver material for public works projects that have been specifically designated as an Essential Governmental Function by the lead governmental agency, but it may not make sense for them to stay open just for material orders for those projects on which work legally may proceed under Shelter in Place Orders.

Note that if deliveries are delayed, this could constitute grounds for a time extension under many contracts if the delay is due to circumstances outside of the contractor’s control. Various agencies including Caltrans are indicating that time extensions will be granted, but check with your respective agencies and document their response as well.

12. **What do I need to do if my work has been delayed or suspended because of the Shelter in Place Orders?**

   a. Check your contract: in particular, look for and read time extension, change order, and suspension of work provisions.

   b. Ideally, get a clear directive from the owner (if you are the general contractor) or from the general contractor (if you are a subcontractor) directing that work stop. If you are ready and able to work, you may be able to assert that the work could have proceeded and that any work suspension is a directive/change for which you are entitled to compensation. Use the RFI process to obtain a written directive to stop work.

   c. Submit required notices (NPC’s etc.), claims documentation, etc.

   d. Track costs (set up and use cost codes) and compile costs.

   e. Seek agreement with the owner (or with the general contractor if you are a subcontractor) about time extensions and reimbursement for demobilization/remobilization.

   f. Make sure to safeguard work against damage or vandalism (copper thefts, arson, etc.) Security may need to be increased as bad actors may feel that it is easy to steal or cause damage with everyone else is sheltering in place.

13. **What about third parties?**

Consider whether your work requires inspection, observation, testing, surveying, etc. by third parties – and if they are available. If they are not, then even if your work legally could be performed under an exemption in the Shelter in Place Orders, it still may not be possible to proceed.
14. Can I send workers who live in the counties subject to stricter Shelter in Place Orders to work on projects outside of those counties?

Yes, if you are sending them to work on Essential Infrastructure or on types of projects that are exempted the Shelter in Place orders.

Once they are there, if they decide to stay (not return to their residence) and work on non-Essential Infrastructure, the Orders would not apply (although they would still be subject to the statewide Executive Order).

Note that there could be union issues involved in sending workers to work in different parts of the state. Contact UCON Labor & Member Services with any questions related to moving union workers.

15. How and when am I going to get paid?

Agencies could have employees work from home in order to process payments to contractors, including steps such as review of certified payrolls, etc. The typical Shelter in Place Order authorizes “Essential Activities,” which includes “work … to otherwise carry out activities or otherwise carry out activities specifically permitted … including Minimum Basic Operations.”

As a practical matter, however, it may not be possible to get invoices reviewed and approved by public owners in a timely manner. If you perform work during the shelter in place period, there may be delays in getting payment, which can lead to significant cash flow issues.

Under Public Contract Code Section 20104.50, “any local agency which fails to make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract shall pay interest to the contractor” at the rate of 10 percent per annum.

Similarly, under Public Contract Code Section 10261.5, “any state agency which fails to make any progress payment within 30 days after receipt of the payment request from a contractor on a construction contract for an undisputed payment request, which was properly submitted by the contractor to the agency, shall pay interest to the contractor” at a rate of 10 percent per annum.

Other prompt payment statutes may apply. For example, there are prompt payment requirements for retention on both public and private projects. Pub. Contract Code 7107 (retention must be paid within 60 days after completion absent good faith dispute; 2% per month penalty); Civ. Code § 8182 (retention must be paid within 45 days after completion absent good faith dispute; 2% per month penalty)

If you accept a check for the principal amount without reserving your rights and objecting to the failure to pay interest, the local agency may attempt to argue that you have waived the right to interest. Civil Code section 3290 provides: “Accepting payment of the whole principal, as such, waives all claim to interest.”

JOB SHUTDOWNS, LAYOFFS & REHIRING

1. Do we have to give notice to our employees and/or the unions if we shut down?

It is recommended to give notice whether or not it is required by law. We recommend staying away from the words "terminated" and "furlough" as they may create issues which were not intended. The notice can be simply as follows:

“Pursuant to the Shelter in Place Order issued on March 16, 2020, by the County of [applicable county name] Public Health Department, [company name] is forced to cease conducting business. As such, you are laid off until further notice.”
2. **Is our company also subject to the federal and/or state WARN (Worker Adjustment and Retraining Notification) Act requirements?**

Based on counsel’s review of federal WARN regulations, California Labor Code, and 9th Circuit case law, each construction site will be viewed as a separate “covered establishment” for those workers whose first reporting location is the jobsite each day. **At any jobsite or office/shop location, if there are fewer than 75 employees who have been employed within the preceding 12 months, Cal/WARN does not apply.** If the 75 number is met but 50 or more employees are not laid off at a single site there is not a “mass layoff” for that location and no notice is required. Where 50 or more are laid off at a jobsite, then the Cal/WARN requirements would apply under the Executive Order guidelines. For purposes of counting the 50 employees at a jobsite, employees who have not worked for the employer for at least 6 of the 12 months preceding the date on which the notice is required are not counted. **Therefore, the Cal/WARN notice requirements may affect only a limited number of contractors.**

As of March 17, 2020, the State of California has suspended liability and penalties for situations where layoffs are due to COVID-19 and the related Shelter in Place orders. However, required notices do need to be given in accordance with Cal/WARN in order to avoid liability/penalties. The Federal WARN Act already includes language that may provide an exemption for an emergency like the current one, but no specific clarifications or relief have been issued. For more detailed information about the current requirements, read the [this legal update](#) and [related FAQ](#). Employers who are or think they may be covered by either Federal WARN or Cal/WARN should also contact their legal counsel.

**TOOL FOR CONTRACTORS – See UCON’s [COVID-19 website](#) for a checklist for Potential/Actual Job Shutdown Action Plan & Notices**

3. **Can I reinstate my union employees who were laid off or furloughed due to the Shelter in Place Orders without going through the hiring hall?**

You should follow the standard recall procedures that you use when recalling workers from longer lay-offs, like seasonal rain delays.

**EXCEPTIONS**

- **Northern California Carpenters** – In a memo that was forwarded to signatory contractors, the union stated that employers can simply e-mail a list of employees they are rehiring to [nccrc@nccrc.org](mailto:nccrc@nccrc.org). The list must include the employees’ full names and Union Membership Numbers, in addition to the rehire date and the jobsite name and location where each rehired employee is to report to work.

- **Northern California Laborers** – See Item #8 in the UCON-NCDCL COVID-19 Relief MOU.

**PAYMENT OF WAGES**

1. **Can I still pay my employees their wages when they’re not working, if we decide or are directed to shut down one or more of our jobs?**

**Collective Bargaining Unit Employees**

Contractors seeking to provide a “stipend” or “bonus” to laid-off employees who are out of work due to job shutdowns must remember that the way you pay employees may trigger fringe benefit obligations. **Additionally, contractors who are using Paycheck Protection Program (PPP) monies to pay non-working employees must include certain fringe benefit payments in order to qualify for loan forgiveness.**

- **If PPP monies are involved:**
  
  See the [this guidance](#) on what must be included in payments to employees. For specific procedures from Northern California unions that we currently have signed Memoranda of Agreements or advisory letters on, see the following links:

  [Carpenters](#) | [Laborers](#) | [Operating Engineers Local No. 3](#)
• If PPP monies are not involved, we strongly advise that you follow these best practices:
  a) Either:
     1. Pay a lump sum amount that does not resemble regular wages OR
     2. If there is an MOU allowing for no fringe benefit payments on non-worked hours (see
        notes below), you can pay non-working employees in hours.
  b) Use a unique cost code, i.e., “COVID-19”, for tracking and accounting purposes
  c) Retain detailed documentation on the reasons for the payment
  d) Do not link the payment to any specific job or project
  These best practices have been reviewed with our labor partners, but keep in mind the Trust Funds
  may still ask questions on future audits.

NOTES ON SPECIFIC CRAFTS:
(Only applicable if PPP monies are NOT involved)
• Northern California Laborers, Operating Engineers Local No. 3, Southern California
  Carpenters, Northern California Teamsters– UCON has obtained relief Memoranda of
  Understanding, confirming that this type of wage payment will not be subject to fringe benefits;
  employers must still ensure that information is coded to clearly identify it as non-working time off
  due to COVID-19 related reasons.
• Northern California Carpenters - Unique authorization is required before an employer can pay
  any form of alternative “bonus” compensation. If you are considering paying your laid-off
  Carpenters anything other than their full package, please contact UCON Director of Labor
  Relations Victor Sella at (510) 362-6959.

Non-Collective Bargaining Unit Employees
If PPP monies are involved, you may be required to keep a certain number of employees on your payroll
whether they are working or not.
Hourly Employees – Yes.
Exempt Employees – Yes, but consult with legal counsel to make sure you are meeting any minimum
requirements.

2. How should we pay employees if we have ongoing jobs but we have employees who decide NOT to
work?
Employees do have the right to not work, and under the circumstances you would not discipline them. You
would need to provide them with their last paycheck within 72 hours.

3. If we decide, or are directed to shut down one or more of our projects, when do we need to provide
our employees with their paychecks?
If you are not able to put employees to work and return them within the same pay period, they will need to
receive their last paycheck on their last day of work if at all possible. Unless the DIR issues a suspension
of the rules in light of the situation, waiting time penalties begin the day of layoff unless the final paycheck
is ready when they are laid off. UCON also initiated discussions with our union partners to try to attain
flexibility; the Northern California Laborers have been the only ones who provided some relief (payment
within 72 hours).

4. What needs to be included in those paychecks?
The final paycheck must include all wages due at the time of the layoff.

Non-Collective Bargaining Unit Employees – Wages need to include commissions which are earned, due
and capable of being calculated. You should include all accrued and unused PTO /vacation.

5. Do I have to provide employees with their paychecks in person?
It is imperative that employees receive paychecks when they are due, in order to avoid liability for waiting
time penalties. While in-person delivery is optimal, it may not always be possible in the current
environment. However, if you are able to get a message to employees either via e-mail or text on their last
day of work telling them that their check is ready, then this will stop waiting time penalties. The following other options are in order of risk to the employer:

- **Direct Deposit** - Individuals who are signed up for direct deposit should have no issue, as long as funds are available to them immediately. There could be waiting time penalties but they would likely be minimal.
- **Mailing Live Checks** – Mailing is only recommended if you have the employee’s request/approval and verification of valid mailing address. If you are able to send a text or e-mail message as mentioned above, they can authorize mailing by return e-mail providing their consent and mailing address. As a last resort, you can mail their check even without authorization as long as you keep a record of mailing so that you have documentation of good faith effort; you may want to require a signature at delivery but this may just cause additional delay, and a dishonest employee or other person at that address could refuse delivery.

**Collective Bargaining Unit Employees** – If they will not be at a jobsite or easily able to pick up their paycheck at the office on that day, another possible option is to work with the local union agents to make sure that they get their paychecks as quickly as possible. UCON is also working with our union partners to gain their understanding and cooperation on this challenge; please contact us if you have any issues with the unions.

**LEAVE REQUIREMENTS FOR EMPLOYEES**

1. **What are the requirements for COVID-19 related Paid Sick Leave and FMLA?**
   
   Two federal leave laws went into effect on **April 1, 2020** and remain effective through December 31, 2020, as part of the Families First Coronavirus Response Act (FFCRA) –
   
   1. Emergency Family & Medical Leave Expansion Act
   2. Emergency Paid Sick Leave Act

   The FFCRA applies to all employers with fewer than 500 employees, based on full-time and part-time employees in the U.S. at the time that an employee applies for either type of leave. It applies to both union and non-union employees – there are no CBA waivers for this special emergency leave.

   **TOOLS FOR CONTRACTORS** - For more information, please see UCON’s [Families First Coronavirus Response Act Guide](https://www.unitedcontractors.org) and the U.S. Department of Labor’s (DOL) [FFCRA Q & A](https://www.dol.gov/agencies/whd/ffcra). UCON has also created a checklist to help you prepare your company for compliance with the FFCRA, available in [PDF](https://www.unitedcontractors.org) and also in Word on our [COVID-19 Resources page](https://www.unitedcontractors.org).

   2. **Do I also have to provide Paid Sick Leave (PSL) as required under state law and/or local ordinances?**

   **Collective Bargaining Unit Employees** – The CBAs provide sick pay/vacation savings accounts in lieu of PSL, and UCON also has PSL waivers in the CBAs. (NOTE: As additional local PSL laws have been passed with specific COVID-19 related leave, UCON has been working with our union partners for additional waivers as needed.) See UCON’s chart on [PSL CBA Waivers Statewide](https://www.unitedcontractors.org) for details. Each union has different practices on how and when their members can access their sick pay/vacation funds. See UCON’s [Union Benefit Plan Information Chart for COVID-19](https://www.unitedcontractors.org) for information on those procedures and whether any early payouts are available.

   **Non-Collective Bargaining Unit Employees** - Follow all state and local laws. A special [page](https://www.unitedcontractors.org) from the Employment Development Department has specific guidance and summarizes resources at a state level.
EMPLOYEE BENEFITS/TRUST FUNDS

1. How long will my employees be able to maintain their health insurance if they are off work for a period of time?

**Collective Bargaining Unit Employees** – It depends on their “hours bank.” Each union’s trust has a different number of hours required to remain eligible. Each individual employee should reach out to the applicable trust fund to obtain that information. In many cases they may be able to review the information through an online portal.

For employers wanting to review the eligibility and hours bank policies, these can be found in the Summary Plan Descriptions (SPDs) for the applicable trust. See UCON’s Union Benefit Plan Information Chart for COVID-19 for basic information on Health & Welfare eligibility maintenance for UCON’s signatory unions, and view the links or contact the numbers below for more details.

**Operating Engineers Health and Welfare Fund (OE12)**  

**Operating Engineers Health and Welfare Trust Fund (OE3)**  
[https://www.oe3trustfunds.org/spd_CA/](https://www.oe3trustfunds.org/spd_CA/)

**Laborers Health and Welfare Trust Fund for Southern California**  
No website – contact Pacific Southwest Administrators, Client Services Department (626) 279-3000

**Laborers Health and Welfare Trust Fund for Northern California**  
[https://norcalaborers.org/forms-and-publications/](https://norcalaborers.org/forms-and-publications/)

**Cement Masons Health and Welfare Trust Fund for Northern California**  
[www.norcalcementmasons.org/Booklets_HW/](http://www.norcalcementmasons.org/Booklets_HW/)

**Cement Masons Southern California Health and Welfare Fund**  
No website – contact Zenith American Solutions (626) 444-4600

**Carpenters Health and Welfare Trust Fund for California**  

**Southwest Carpenters Health and Welfare Trust**  

**Teamsters Benefit Trust**  
(Plan V-A Construction for most employees)  
[www.tbtfund.org/plans/plan-v-a/](http://www.tbtfund.org/plans/plan-v-a/)

**California Ironworkers Field Welfare Plan**  
[www.ironworkerbenny.com/benefitssummaries.html](http://www.ironworkerbenny.com/benefitssummaries.html)

**Non-Collective Bargaining Unit Employees**

1. **Supervisory Union Employees** (above the rank of foreman and subject to flat monthly payments) -- Based on the provisions of those agreements, employers must continue to submit monthly benefits regardless of the number of hours worked. See UCON’s Guide to Union Supervisory Employees & Retirees for more details.

2. **Non-Union Employees** (payroll, estimators, etc.) - This will depend on the health coverage provided by the company. Check with your insurance broker or carrier.

2. What benefits are available to my employees through the state?

Be sure that you educate all of your employees on the following benefits. Brief summaries are below; for more details, please visit the Employment Development Department (EDD) COVID-19 website.

- **State Disability Benefits (SDI)**  
  Who is eligible - Individuals who have or have been exposed to COVID-19, including being quarantined (requires medical documentation)  
  What is provided - 60-70% of wages provided up to $1,300.00 per week depending on income, for up to 52 weeks; unpaid one-week waiting period is waived for this situation
• **Unemployment Insurance (UI)**
  
  **Who is eligible** – Workers with reduced hours due to COVID-19 related reasons
  
  **What is provided** - Up to $450/week for 13-26 weeks; unpaid one-week waiting period is waived for this situation (NOTE: Additional federal funds have also been authorized to help states manage increased claims as part of the FFCRA.)

• **Paid Family Leave (PFL)**
  
  **Who is eligible** – Individuals with full or partial loss of wages due to caring for an ill or quarantined family member with COVID-19 (requires medical documentation)
  
  **What is provided** - 60-70% of wages up to $1,300.00 per week depending on income, for up to 6 weeks.

3. **For my union employees, are the Trust Funds going to be more lenient on the due date for monthly contribution payments due to disruptions in business operations and increased difficulties with getting payments on projects?**

Each individual employer should reach out to the applicable trust fund for those requests, as it will depend on many factors including Trust policies and individual employer payment history. We also recommend keeping records of reasons for any late payments and submitting reduction or waiver requests once business operations can return to a more normal state.

**SAFETY & HEALTH**

**TOOLS FOR CONTRACTORS** – See UCON’s [COVID-19 Resources page](#) for all of our resources under Tools & Checklists and Safety, Health & Security, which are constantly being updated.

1. **What kinds of policies can or should we implement during the Shelter In Place Orders?**

Make sure that you have adopted the appropriate contingency safety procedures related to COVID-19 transmission. Additionally, we strongly recommend that you conduct regular safety meetings to make sure that employees understand your policies, and have them sign off on receipt and attendance. You will want to include hygiene, social distancing, procedures for if an employee (or anyone they are in regular proximity with) has contracted or been exposed to COVID-19.

Most importantly, the amended Shelter in Place Orders issued by the six Bay Area counties and the City of Berkeley contain very specific requirements for Construction Safety Protocols that must be followed on all construction sites in order to continue operating.

Resources for more information:

- [UCON COVID-19 Resources Page](#) – access to the Shelter In Place Orders and Construction Safety Protocols, along with many other resources that are constantly being updated
- [Cal/OSHA Infection Prevention in Construction](#) – industry-specific guidance and resources
- UCON Tailgate Topic on Coronavirus Safety – [English](#) / [Spanish](#)
- UCON Safety Consultant Chris Lee – cearllee@sbcglobal.net, (510) 821-0242

2. **Is there a special training for COVID-19 protocol?**

UCON’s union partners have developed online COVID-19 training classes to educate union workers on how to protect themselves and their fellow workers, and how to stop the spread of COVID-19. Learn more about each craft’s certification on UCON’s [COVID-19 Resources Page](#).
3. **Can we ask our employees to sign a waiver if our projects are continuing to go on and they are willing to work?**

NO. However, as mentioned above, you can and should have them sign receipt and understanding of any company policies related to coronavirus safety, including attendance at tailgate meetings on the topic.

4. **How do we handle employees who are disabled, or at an age that are at higher risk for contracting coronavirus?**

Treating any employees differently based on a protected class can be a liability. See the [EEOC guidelines](https://www.eeoc.gov) for recommendations, and discuss any specific concerns with legal counsel.

5. **What are the potential responsibilities and liabilities associated with employers communicating to employees that a fellow worker has contracted COVID-19 or may have been exposed to it?**

If an employee is confirmed to have COVID-19, we recommend that you inform the rest of your workforce of the possible exposure to COVID-19 in the workplace. However, do not disclose to co-workers the identity of the employee. Federal and California laws, such as the Americans with Disabilities Act (ADA) and California's Confidentiality of Medical Information Act (CMIA), may establish confidentiality restrictions. One obvious liability is a lawsuit for violation of privacy. For more information on balancing medical and privacy concerns, see [this article](https://www.calchamber.com) from CalChamber.

6. **Can we take employees’ temperatures at the jobsite and/or implement other screening for COVID-19, as some owners are wanting us to do?**

The U.S. Equal Employment Opportunity Commission (EEOC) has updated its guidance to allow for the taking of employee temperatures while COVID-19 remains a pandemic. However, employers still bear the responsibility to ensure that all applicable laws, including but not limited to the ADA and HIPAA, are complied with in the process. Employers need to have clear policies in place – What is the temperature threshold for the employer to take an action, and what are the next steps in the process? Read [this article](https://www.calchamber.com) for guidance on six issues to consider when taking employees’ temperatures.

The EEOC has also provided a [comprehensive Q & A page](https://www.eeoc.gov) to help with the application of the different EEO laws with the COVID-19 pandemic. Read [this article](https://www.calchamber.com) for analysis of the key points and intersection with California law.

**Collective Bargaining Unit Employees** – Check UCON’s COVID-19 page under the applicable union for any specific guidance.

7. **What steps should contractors take to comply with social distancing requirements when, for example, employees are traveling in the same truck or may come within six feet of each other on the jobsite for certain tasks?**

For the truck situation, send two trucks if necessary, or send a truck with a crew cab – one employee drives, the other is in the back seat on the opposite side. To the maximum extent possible maintain a six-foot distance from other people (such as by staggering job tasks), and adhere to common personal hygiene practices – hold daily tailgate meeting before the job begins and cover the tailgate outline on ways to protect yourselves.

8. **Is an employer going to be required to list an employee that misses work as recordable if the employee was affected at work?**

In response to UCON’s clarification request, Cal/OSHA provided the following response:

“A COVID-19 related illness is reportable to the nearest Cal/OSHA District office if a worker becomes ill while at work and is admitted directly from the jobsite as an in-patient at a hospital. Reporting must be within 8 hours after the employer knows of the serious illness…”
For more details, please see UCON’s April 9, 2020 bulletin on Cal/OSHA Guidance.

9. Will employees be able to file workers’ compensation claims if they become infected with or exposed to COVID-19, even if it’s not clear whether or not that happened at the jobsite?

An Executive Order was signed by Governor Newsom on May 7 that states what criteria need to be met to enable employees to file workers’ compensation claims for COVID-19 related illnesses. The burden of proof ends up being mostly on the employer. UCON is continuing to advocate for restricting this policy to frontline medical professionals and public safety personnel. For more details and recommendations on what steps you should take, read UCON’s analysis.

BUSINESS RESOURCES

1. We are taking a huge financial hit due to the COVID-19 crisis. What resources are available to my company for financial aid and relief?

- The Coronavirus Aid, Relief and Economic Security (CARES) Act will allow small- and medium-sized businesses to receive federal loans – in some cases forgivable – to cover payroll and other expenses. Read more about the available relief here, along with the Small Business Owner’s Guide to the CARES Act.
- One specific part of the CARES Act is the availability of Paycheck Protection Program loans – read more about them here, and go to the following links for more information on how the loan program works:
  - Small Business Administration (SBA) PPP web page
  - Treasury Department PPP FAQ
- The CARES Act includes an Employee Retention Credit (ERC), which encourages businesses to keep employees on their payroll. The IRS has issued FAQ, and you can also read this article for analysis of the guidance.
- Additionally, disaster loans may be available from the Small Business Administration (SBA) for businesses with under 500 employees. See the SBA website for more information and guidance, including a Table of Size Standards to help you determine whether or not your company qualifies as a small business. A chart showing the different types of loans available through the SBA, including under the CARES Act, can be viewed here.
- Tax credits will also be available to help businesses defray the costs of providing the new types of leave under the Families First Coronavirus Response Act (FFCRA). Read the latest information here.

Sources: Cal/OSHA; U.S. DOL; EEOC; IRS; Leonidou & Rosin Professional Corp.; Simpson, Garrity, Innes & Jacuzzi, P.C.; Sweeney Mason; Fisher Phillips; Littler; Chris Lee; Liebert Cassidy Whitmore