CORONAVIRUS (COVID-19) PANDEMIC
CONSTRUCTION INDUSTRY FAQ

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.

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 rapidly changing – UCON will make every effort to update this information
as quickly as possible. Governor Newsom has issued a statewide Executive Order with
slightly different provisions from the Shelter in Place orders. The Governor’s Office has
issued conflicting information as to whether the Executive Order preempts the local Shelter
in Place Orders; 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.
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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 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 - Refer to the specific Order for the county/counties in which your work is being performed for that project. See UCON’s Critical Memo of March 16, 2020 for more details and explanation on the provisions.

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

While there are differences in the local and state Orders, you should make a good faith determination as to whether continuing to work falls under the “essential business” exemption. If your company’s operations are questioned by law enforcement, we would recommend referring back to the government ordinance you believe provides for continued operations. The State of California’s COVID-19 resources page also provides some guidance to this question.

3. Should we continue to work or not? And how do we manage our work, delays, etc. with the owners (or GCs if we are a subcontractors) pertaining to this situation?

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.

4. 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:

i. The minimum necessary activities to maintain the value of the business's inventory, ensure security, or for related functions.

ii. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.

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

EXECUTIVE ORDER, SHELTER IN PLACE ORDERS & CONSTRUCTION CONTRACTS

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 “work providing essential products and services at an Essential Business or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations.” (SIP Order, ¶ 10.a.) This work can include things such as payroll, benefits and similar.
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 this may vary from Order to Order, however this is the main provision allowing some forms of construction work to continue. **Do not make assumptions based on reports or adjacent county Orders.** The primary sample language that has appeared with the most frequency is as follows:

> For purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operations and maintenance of “Essential Infrastructure,” including, but not limited to, public works construction, construction of housing (in particular affordable housing or housing for individuals experiencing homelessness), airport operations, water, sewer, gas, electrical, oil refining, roads and highways, public transportation, solid waste collection and removal, internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services), provided that they carry out those services or that work in compliance with Social Distancing Requirements as defined this Section, to the extent possible.

Currently, public agencies are proceeding with both new and existing construction work. Based on the above language, however, it is possible that public health and law enforcement authorities could assert that work is only exempted if it is “necessary to the operations and maintenance” of Essential Infrastructure as distinguished from construction of new public projects.

3. **How do you determine which projects are covered under the Shelter in Place Order exemptions for “essential infrastructure”?**

   a. Under the typical Shelter in Place Order, there is an exemption for maintenance work: (a) for “Essential Infrastructure”, including public works (¶ 10(c)); for “Essential Businesses” such as hospitals, gas stations, grocery stores, etc. (¶ 10(f)), and to support “Minimal Basic Operation” (¶ 10(g)).

   b. Determine whether a private project is exempt by reading the text of the applicable Shelter in Place Orders. If you have questions, contact your attorney.

   c. The local health departments and law enforcement, such as the Sheriff’s office, are responsible for enforcement. The approach so far has been to contact a business and discuss with them whether the business is in fact able to operate under an exemption. For example, the Sheriff’s office contacted Tesla and warned it that making electric cars was not within the scope of an exemption. Health departments and law enforcement have considerable discretion as to what enforcement measures to pursue. A willful violation of a Shelter in Place Order is a misdemeanor that may be punished by a fine and a jail sentence of up to one year.

4. **What is Public Works Construction?**

   There is no definition, but based on similar language in other laws, we expect that work for a public owner will be considered to be “public works construction.”

   - **Pub. Contract Code § 1101.** “Public works contract,” as used in this part, means an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

   - **Civil Code § 8038.** “Public works contract” has the meaning provided in Section 1101 of the Public Contract Code.

5. **What is Construction of Housing?**

   In some of the orders, construction of housing is exempted. Questions have risen as to the definition of
housing. The interpretation that is being utilized now at this time is as follows, and this language is provided to give you a reference point with your own counsel.

“When a statute contains a list or catalogue of items, a court should determine the meaning of each by reference to the others, giving preference to an interpretation that uniformly treats items similar in nature and scope. In accordance with this principle of construction, a court will adopt a restrictive meaning of a listed item if acceptance of a more expansive meaning would make other items in the list unnecessary or redundant, or would otherwise make the item markedly dissimilar to the other items in the list.” *Friends of Oceano Dunes, Inc. v. San Luis Obispo County Air Pollution Control Dist.*, 235 Cal. App. 4th 957, 965 (2015).

Applying that rule, and given the very broad list of items that constitute “Essential Infrastructure,” it would be reasonable to read the definition as referring to all housing, and not just affordable housing or housing for individuals experiencing homelessness. The fact that the definition uses the words “in particular” also indicates that housing is not limited to affordable housing or housing for individuals experiencing homelessness.

6. *Are maintenance projects included in construction work for “Essential Infrastructure?”*

Yes, as long as those projects are on or in support of other sectors within “Essential Infrastructure” – for example, a maintenance project on a hospital or grocery store.

7. *What are Minimum Basic Operations and what are Social Distancing Requirements?*

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

i. The minimum necessary activities to maintain the value of the business’s inventory, ensure security, process payroll and employee benefits, or for related functions.

ii. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.

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, and
- not shaking hands.

8. *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 for “Essential Infrastructure”. For example, work on a private office building or for tenant improvements at a shopping mall.

b. Where it is not possible to comply with Social Distancing Requirements “to the extent possible.”

c. Where the local Order does not explicitly note exemptions or provisions for construction.

9. *What should we do if the project owner (and/or GC if we are a sub) directs the project to continue, 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 owner (if you are the general contractor) or from 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.

10. **What if the project owner directs the project to continue 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

11. **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 for Essential Infrastructure and the contractor/subcontractor can perform work safely and in compliance with Social Distancing Requirements “to the extent possible.”

12. **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 authorizes “Essential Activities”, which includes “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 “construction of housing”, but it may not make sense for them to stay open just for material orders for Essential Infrastructure projects).

   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.

13. **What do I need to do if my work is 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 owner (if you are the general contractor) or from 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 owner (or with 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.

14. **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.
15. **Can I send workers who live in the counties subject to the order to work on projects outside of those counties?**

Yes, if you are sending them to work on Essential Infrastructure.

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.

Note that there could be union issues involved in sending workers to work in different parts of the state.

16. **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 specifically permitted in this Order.” In addition, “Individuals may leave their residence to provide any services or perform any work necessary to the operations and maintenance of ‘Essential Infrastructure.’”

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.”

**SHUTDOWN NOTICE REQUIREMENTS**

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 [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.

**PAYMENT OF WAGES**

1. **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 is also working with our union partners to try to attain flexibility so that employers can pay union workers on the next payroll cycle but nothing is in place at this time.

2. **What needs to be included in those paychecks?**

   The final paycheck must include all wages due at the time of the layoff. This includes commissions which are earned, due and capable of being calculated.

   **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.

3. **Do I have to provide those employees with their paychecks in person?**

   It is imperative that they receive the check when it is due, in order to avoid liability for waiting time penalties. While in-person delivery is optimal, it may not be possible in this situation. 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.

4. How should we pay employees if we do continue working 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.

5. Can I still pay my employees their wages during a shutdown, if we decide or are directed to shut down one or more of our jobs?

Collective Bargaining Unit Employees - Yes, however, the trust funds may view any type of payment to employees as triggering fringe benefit contribution requirements. The safest method is through a “relief bonus” that is a lump sum not tied to any hourly amount (i.e., not just their normal wage rate times 40 or 80). We are working with our Union partners to address this scenario and will provide you with further guidance when available.

Non-Collective Bargaining Unit Employees
Hourly Employees – Yes.
Exempt Employees – Yes, but consult with legal counsel to make sure you are meeting any minimum requirements.

LEAVE REQUIREMENTS FOR EMPLOYEES

1. What are the new requirements for Paid Sick Leave and FMLA?

Two new federal leave laws go into effect on April 1, 2020 as part of the Families First Coronavirus Response Act (FFCRA) –
   1. Emergency Family & Medical Leave Expansion Act
   2. Emergency Paid Sick Leave Act
For more information, please see Families First Coronavirus Response Act – Executive Summary.

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. Each union has different practices on how and when their members can access the funds. UCON is currently working with our union partners to try to grant flexibility on access of funds during this state of emergency and job shutdown period.

Non-Collective Bargaining Unit Employees - Follow all state and local laws. A special page from the Employment Development Department has specific guidance and summarizes resources at a state level.

EMPLOYEE BENEFITS

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. Below is a list of links or contact numbers for UCON’s signatory unions.
Operating Engineers Health and Welfare Fund (OE12)

Operating Engineers Health and Welfare Trust Fund (OE3)
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/

Cement Masons Health and Welfare Trust Fund for Northern California
www.norcalcementmasons.org/Booklets_HW/

Cement Masons Southern California Health and Welfare Fund
No website – contact Pacific Southwest Administrators, Client Services Department (626) 279-3000

Carpenters Health and Welfare Trust Fund for California
https://cfao.org/forms-and-documents/

Southwest Carpenters Health and Welfare Trust

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

California Ironworkers Field Welfare Plan
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.
SAFETY & HEALTH

1. **What kinds of policies can I 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.

Resources for more information:
- CalOSHA’s [Guidance on Requirements to Protect Workers from Coronavirus](#) page, which includes interim guidelines for general industry
- UCON Tailgate Topic on Coronavirus Safety – [English](#) / [Spanish](#)
- UCON Safety Consultant Chris Lee – ccarllee@sbcglobal.net, (510) 821-0242

2. **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.

3. **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](#) for recommendations, and discuss any specific concerns with legal counsel.

4. **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](#) from CalChamber.

5. **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 6 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 6-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.

6. **Can we take employees’ temperatures at the jobsite, as some owners are wanting us to do?**

The 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?

**Collective Bargaining Unit Employees** – So far, the Northern California Carpenters have stated that they will not object to an employer using noninvasive methods to take the temperature of a Union member,
though the employer must compensate an employee during the testing process. UCON is working to get similar assurances from other Unions.

7. **At what point is an employer responsible for any type of awareness training about this virus?**

An employer’s IIPP should already contain eight key elements. One of those is HAZARD ASSESSMENT – periodic inspections/reviews must be conducted **when new, previously unidentified hazards are recognized**. Whenever the employer is made aware of a new or previously unrecognized hazard, training and instruction shall be provided.

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

We have requested clarification on this and related issues from the Chief of Cal/OSHA. We are awaiting a response.

Title 8, Section 14300.7 General Recording Criteria:

"You must consider a case to meet the general recording criteria if it involves a significant injury or illness **diagnosed by a physician or other licensed health care professional...**"


Sources: Leonidou & Rosin Professional Corp.; Simpson, Garrity, Innes & Jacuzzi, P.C.; Sweeney Mason; Fisher Phillips; Littler; Chris Lee; Cal/OSHA