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To: CPMCA Info
Subject: CPMCA - CLC Update 3/30/20- COVID-19 Industry FAQs

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While we continue to field many questions related to the COVID-19 outbreak focused on the implementation of the Statewide Shelter in Place (SIP) Executive Order, we have also received a high volume of questions on ancillary industry impacts and concerns. To best distribute this information, we have developed these frequently asked questions to offer some guidance.

Is ALL construction work considered an essential service under the STATE shelter in place order?

Yes (for now), the Governor's office has provided a full list of who qualifies as an essential critical infrastructure worker under the statewide Shelter in Place (SIP) order. Included in that list are:

"Construction workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects (including housing construction)."

"Workers such as plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of construction sites and construction projects (including those that support such projects to ensure the availability of needed facilities, transportation, energy and communications; and support to ensure the effective removal, storage, and disposal of solid waste and hazardous waste)."

The statewide order applies to all Californians but depending on the conditions in their area, local officials may enforce stricter public health orders. They may not loosen the State's order in any way.

While on this subject, as we advocate for the continuation of construction work as an essential service in California, this is an urgent reminder for construction firms to enforce strict health and safety guidelines and vigilant oversight on every jobsite. Maintaining strict safety protocols that meet or exceed the CDC and state safety standards is the only way to preserve California's recognition that all construction is an essential service.

To limit our employee's potential exposure to COVID-19 can we work them four ten-hour days without paying overtime?

It depends, for private work in California the answer is “yes,” so long as your collective bargaining agreement (CBA) provides for the alternative work week. The answer is “no” for California public works projects. All work over eight hours per day on public works is considered overtime. This requirement is in the California State Constitution and cannot be waived by statute, CBA or PLA.

What options are available to file stop notices - mechanics liens etc. if county offices and court houses are closed?

Experts in this area recommend that the best practice is to attempt to record several days in advance, due to backlog at the recorder’s office. It’s also recommended to send liens to the recorder’s office via FedEx or UPS “signature required,” to ensure proof that the lien was at least tendered for recording. Evidence of an attempt to record within the time required by law will best protect the claimant. They also recommend the use of online filing services such as recordmydocs.com.

Does a paid sick leave CBA exemption apply to the new federal Covid-19 paid sick leave?

No, the language found in some California construction CBAs exempting employers from the state paid leave requirements, does not apply to the new Federal paid sick leave requirement under the Families First Coronavirus Response Act. Unlike the California law, the Federal law does not contain language to allow for its provisions to be waived within a CBA.

Are contractors subject to the state and federal laws requiring advance notice of mass layoffs?

Yes, California Labor Code sections 1400 to 1408 – known as “Cal-WARN,” requires employers that operate a “covered establishment” (any industrial or commercial facility that employs, or has employed within the preceding 12 months, 75 or more persons) to give notice of a “mass layoff” (during any 30-day period, 50 or more employees at a covered establishment are separated from their positions due to lack of funds or lack of work). Specifically, when ordering a mass layoff, the employer must, at least 60 days before the order takes effect, give notice of the layoff to affected employees (or their union, if union-represented), the California Employment Development Department, the local workforce investment board, and the chief elected official of each city and county government within which the mass layoff occurs. Failure to provide the required notice subjects the employer to legal liability in a civil action for (1) a daily civil penalty of up to \$500; (2) each employee’s lost wages, lost value of benefits, and any medical expenses incurred due to the loss of medical insurance; and (3) the employee’s attorneys’ fees.

On March 17th Governor Newsom issued an Executive Order N-31-20 that provides some relief during the COVID-19 coronavirus outbreak. The Order suspends portions of the law (60-day notice; liability for damages; liability for the civil penalty) on the condition that an employer does all of following:

1. Orders a mass layoff because of COVID-19-related business circumstances that were not reasonably foreseeable as of the time that 60-day notice would have been required;
2. Gives as much notice as practicable of the layoffs, providing a brief statement of the basis for reducing the notification period along with the information required by the federal WARN Act for notices; and
3. Includes the following statement in its notice: “If you have lost your job or been laid off temporarily, you may be eligible for Unemployment Insurance (UI). More information on UI and other resources available for workers is available at labor.ca.gov/coronavirus2019.”

It is our understanding that 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, 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.