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California Labor Commissioner Guidance Requires Employers to Pay for COVID Test and Testing Time

Employers may legally require their employees be vaccinated. Consistent with California's FEHA, all employers with five or more employees have an affirmative duty to make a reasonable accommodation for any employee with a disability or sincerely-held religious belief. Employers must engage in a good faith, interactive process with employees in these situations. One such accommodation may be to require routine COVID-19 testing in lieu of vaccination.

Recently, California Labor Commissioner Lilia García-Brower confirmed that if an employer does mandate COVID-19 testing or vaccination, the time it takes for an employee to get tested or vaccinated constitutes "hours worked" and is compensable. This includes travel and wait times.

While time spent waiting for test results is not compensable, the employee may be able to utilize paid leave while waiting for results. California employers should remain mindful of the various types of paid sick leave available - i.e. Paid Sick Leave and California COVID-19 Supplemental Paid Sick Leave.

If tests or vaccinations are mandated as a condition of employment, those costs are also a reimbursable business expense. Thus, employers requiring COVID-19 testing or vaccination may want to consider a designated testing site or acceptable vendor[s] to avoid disputes over costs.

Employers should be cautious about any perceived retaliation that may arise from workers who request an accommodation in lieu of testing or vaccination or those who use paid sick leave in connection with getting vaccinated or tested.

More information about the California Labor Commissioner's guidance can be found [here](#).

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Questions? Contact Stokes Wagner.