



April 24, 2020 as of 3:05pm

## An Update from MCAC on COVID-19

### Weekly Headlines:

A Member Asked: What are the Legal Requirements Regarding Pay and PPP Loan Forgiveness?

Air Quality Regulatory Compliance During COVID-19

Preparing for Cal/OSHA COVID-19 Enforcement

State of the State: What's Happening (or Not Happening) at the State Capitol

### MCAC COVID-19 Updates Now Online

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You have questions. We are getting answers. We will be featuring member questions and issues of interest in future bulletins.

Coming soon: Online training resources for OSHA 10 & 30 and more. Paid leave vs. FMLA for employee that recently had a baby.

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**I. COVID Q&A - A Member Asked: "What are our legal requirements regarding pay to be eligible for ([Paycheck Protection Program](#)) PPP loan forgiveness?"**

**Q.** Of 45 employees, 10 are currently on paid leave. The other 35 are still working. If we pay 40 hours to those on leave, are we required to pay those still working 40 hours too?

**A.** Loan forgiveness under the PPP will depend almost entirely on whether, during the 8 week period following the date on which the first disbursement of funds was made, you use at least 75% of the loan proceeds towards payroll costs and you maintain your full time equivalent employee headcount numbers.

In determining whether you want to pay 40 hours per week both to your employees who are still actively working and to those who are on paid leave status, you should consider whether cutting the hours of either group will result in you paying less than 75% of the loan proceeds towards payroll over the pertinent 8 week period.

## II. Cal/EPA and SCAQMD Regulatory Compliance During COVID-19

Currently, there has been no relief granted from compliance with any state or local *air quality regulations*. However, the SCAQMD is offering temporary relief for certain *administrative requirements* such as placards and stickers for portable equipment/engines and certain routine reports (ref. II.E on pages 3-4 of the [SCAQMD Advisory](#)).

On April 15, 2020, both Cal/EPA and the South Coast Air Quality Management District (SCAQMD) issued advisories to the regulated community.

- [CalEPA Issues Statement on Compliance with Regulatory Requirements During the COVID-19 Emergency](#)
- [SCAQMD Advisory Notice Regarding Enforcement Discretion to Help Address Impacts of COVID-19](#)

**Both agencies have very specific time-sensitive protocols for requesting *any* kind of relief.**

CalEPA states that hardships "...must be presented to the appropriate Cal/EPA board, department or office before falling out of compliance."

### Contact Cal/EPA:

- Email is the most expeditious way to contact the CalEPA due to the high number of staff who are teleworking.
- Contact information can be found at [CalEPA's Boards, Departments and Offices](#) webpage.

South Coast AQMD states it "...will exercise enforcement discretion to extend administrative deadlines that fall within the period of March 12, 2020 through May 11, 2020."

### Contact SCAQMD:

Marian Coleman, Deputy Executive Officer for Compliance & Enforcement  
[mcoleman1@aqmd.gov](mailto:mcoleman1@aqmd.gov) or (909) 396-2415

Terrence Mann, Assistant Deputy Executive Officer for Compliance & Enforcement  
[tmann@aqmd.gov](mailto:tmann@aqmd.gov) or (909) 396-3023

## III. Be Prepared for COVID-19 Enforcement

Cal/OSHA COVID complaints are growing. The number of COVID-specific complaints as of mid-April 2020 was estimated to be three times the number of all complaints investigated in the first quarter of 2019, according to an [April 17 Cal/OSHA Reporter Flash Report](#).

- 1Q 2019 - DOSH investigated 488 complaints.
- COVID-19 Complaints - approximately 1,500 as of 4/17/20.

On April 16, 2020 OSHA issued [interim guidance](#) on evaluating employers' good faith efforts during the COVID-19 pandemic. In instances where an employer is unable to comply with OSHA-mandated training, audit, assessment, inspection, or testing requirements because local authorities required the workplace to close, the employer should demonstrate a good faith attempt to meet the applicable requirements as soon as possible following the re-opening of the workplace.

Failure to comply with [OSHA's recommendations for preparing a workplace for coronavirus](#) will likely be viewed as a failure to take all reasonable precautions to protect employees from coronavirus exposure, potentially triggering claims of serious and willful misconduct in the event an employee dies from COVID-19 and claims to have contracted the virus at work. The CDC has also issued helpful [guidance](#).

### Things to Consider for OSHA Preparedness:

- OSHA is prioritizing inspections based on risk level with healthcare facilities, first responders, biological laboratories and the like ranking on the high and very high risk categories.
- Prepare for spot checks on random job sites for social distancing and PPE compliance (personal protective equipment). Whistleblower complaints are on the rise.
- Violations of OSHA standards cited under this interim inspection guidance will normally be classified as "serious" violations.
- In the event of inspection, keep the scope of the inspection to the specific complaint (for example, if OSHA has concerns about physical distancing in a particular area of the facility, the inspection should just be focused on that part of the facility).

Click [here](#) for more preparation tips.

#### IV. State of the State

American Subcontractors Association of California (ASAC) Lobbyist Skip Daum reports the current situation at the State Capitol:

*The session is expected to convene before June 15 in order to adopt a NEW State budget. We're burning through the \$18 billion surplus fast and cuts to other programs will surely occur. These may include construction (of hospitals, emergency shelters and roads) so we'll watch carefully. I'm sure you're watching for the State and counties to "reopen". Before they do, it's a good time for you to review your insurance policies and contract terms with your insurer, lawyer, employees, suppliers and project owners.*

#### V. NEW! MCAC COVID-19 Updates Now Available [Online at www.mca-ca.org](http://www.mca-ca.org)

No need to search your Inbox for MCAC COVID updates. Just visit the website where they are now available.

#### Your State and National Association Resources

- [MCAC Home Page - COVID-19 Resources](#)
- [MCAA COVID-19 Resource List](#)

**Stay safe and be well everyone!**

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Sincerely,

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