

**KNOW YOUR RIGHTS**

# **EMPLOYMENT AND LABOR DURING COVID-19**

*National Lawyers Guild, S.F. Bay Area Chapter*



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**National Lawyers Guild,  
S.F. Bay Area Chapter**

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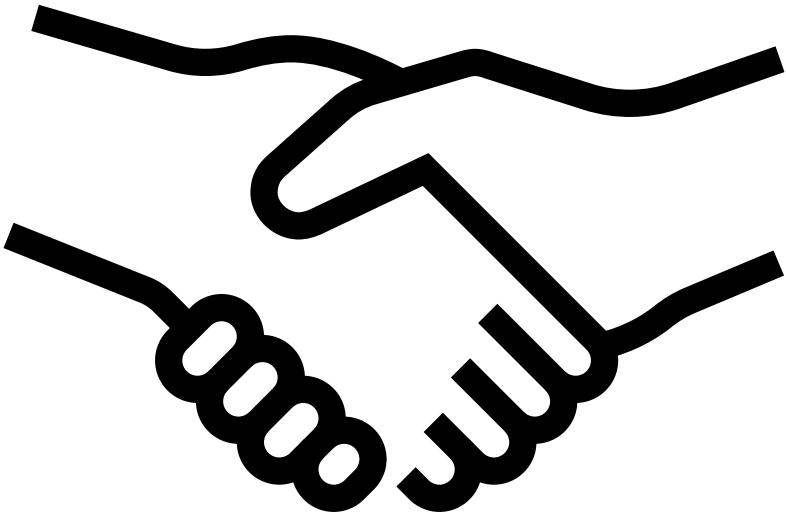
[www.nlgsf.org](http://www.nlgsf.org)

*This pamphlet was created as part of the Labor and Employment  
Committee of National Lawyers Guild - San Francisco Bay Area.*

# INTRODUCTION



The National Lawyers Guild was founded in 1937 in the midst of the Great Depression. One of its early efforts was to support the New Deal, which included government-funded work programs for the unemployed, establishment of the National Labor Relations Board, and unemployment and disability insurance compensation. The New Deal came about because of a sustained social movement demanding major economic change in the face of mass unemployment and economic insecurity throughout the 1930s. We now find ourselves in another period of mass unemployment and economic insecurity. Just as in the 1930s, individual and collective action is the only way that the needs of the 99 percent will be met. This document is intended to provide information about your rights in the workplace as they relate to the Covid-19 pandemic so that you can take action and organize with others.



# RIGHT TO A SAFE WORKPLACE

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## ► What are my rights regarding workplace safety?

You have the right to work in a safe and clean work environment where you are physically safe and not exposed to working conditions that are hazardous to your health.

Among other health protections, your employer must provide you with all of the following:

- Access to a clean, sanitary washing facility maintained in good working condition.
- Warm water and soap to wash your hands.
- Clean individual towels, made of cloth or paper, or warm-air blowers to dry your hands

An unsafe environment includes being asked to do your job in an unsafe manner, such as without the proper health and safety equipment. If you need personal protective equipment to do your job safely, like face masks, sanitizer and gloves, ask for them. Your employer must provide these at no cost to you.



## ► What can I do if my workplace is unsafe?

If your workplace is unsafe for any reason, you should refuse to work in that environment and take one or more of the following actions:

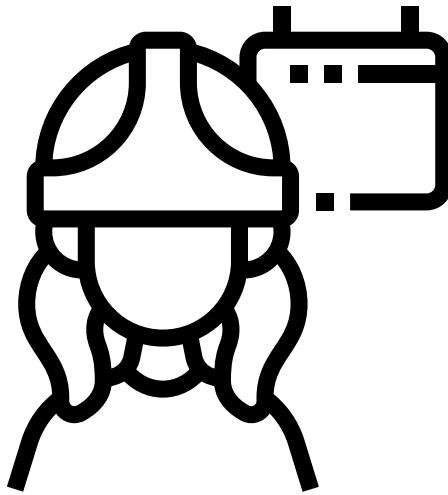
- Report your concerns to higher managers or to human resources.
- Talk to your union.

- If you have no union, organize your co-workers to act together to demand safe working conditions. This action can include a strike. (See The Right to Strike and other Work Actions section below.)
- File a complaint with CAL-OSHA (Division of Occupational Safety and Health) online. <https://www.dir.ca.gov/dosh/complaint.htm>

Your employer cannot fire you, or otherwise retaliate against you, for complaining (to your employer or to an outside organization) about unsafe working conditions or for refusing to work in an unsafe working environment. If you have been fired or otherwise retaliated against for complaining about unsafe work conditions, you can file a complaint with the DLSE (Division of Labor Standards Enforcement).

<https://www.dir.ca.gov/dlse/HowToReportViolationtoBOFE.htm>

In California, all workers are protected by labor laws. The DLSE or CAL-OSHA will not question your immigration status nor report it to other government agencies. There is no need for a social security number or photo identification to file a report with either agency.



# RIGHTS TO PRIVACY & CONFIDENTIALITY ON THE JOB

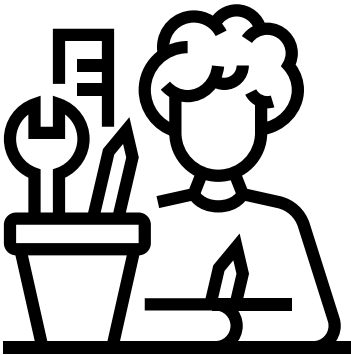
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## ► Can my employer take my temperature?

Normally taking employees' temperatures would violate the constitutional right to privacy and the laws prohibiting disability discrimination. However, during the pandemic, employers can take employees' temperatures if they are doing so to determine if the employees may have Covid-19. This may change over time and depend upon the pandemic and local circumstances.

However, an employer can't single out employees to take their temperature based on biases such as the employee's disability, perceived disability, age, race, or national origin.

Don't be afraid to organize to protect your privacy by talking to other employees, your union, and your employer. If you feel your employer is singling you or others out by taking your temperature, consider organizing with your union or co-workers, or reporting concerns to the federal Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment & Housing (DFEH).



## ► Can my employer ask about whether I have had, or been exposed to, the coronavirus or ask for other medical information?

Your employer can generally ask if you (1) have symptoms of Covid-19 and/or been exposed to someone who is exhibiting symptoms, (2) tested positive for Covid-19, or (3) traveled to a

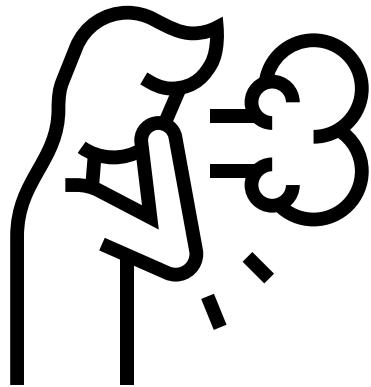
county impacted by Covid-19. An example would be asking to report if you have a fever and/or dry cough. The EEOC has stated that inquiring into an employee's symptoms is acceptable, at least at this point in time, because of the threat of the pandemic. An employer can also ask you to go home if you have symptoms or potential exposure and to self-quarantine if warranted.

Your employer should not ask whether you have a disability, preexisting condition, or any condition that makes you more vulnerable to Covid-19, because that invades your privacy and violates anti-discrimination laws. (This may be different if you specifically ask for a reasonable accommodation, see the Right to be Free of Discrimination and Retaliation section below.)

In addition, an employer can't single out some employees for questioning based on their national origin (regardless if their nation of origin has a high outbreak of Covid-19), age (even though older employees are considered more vulnerable to Covid-19), or disability (unless you specifically ask for a reasonable accommodation, see the Right to be Free of Discrimination and Retaliation section below).

### ► **What about my privacy if I report symptoms of Covid-19 or association with someone with Covid-19?**

If you report exposure, or possible exposure, your employer will generally report to others who have been exposed to you (namely, close enough geographically and in time) that they have been exposed, including the date and background information sufficient to protect and notify that employee. The employer should never disclose your name or your medical situation. When you report this, make sure you ask for your privacy to be protected.



**► Can my employer send me home from work, or is it up to me to decide if I feel well enough to work?**

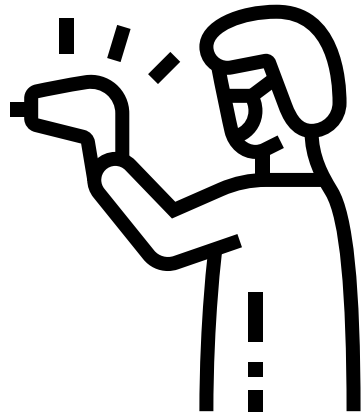
If you have symptoms of Covid-19, or have been exposed to someone who does or traveled to certain countries, your employer can send you home for enough time to ensure that you aren't a health danger to others. Here, the health and safety of others is considered, on balance, significant enough to permit an employer to send you home.

**► Can my employer require me to get a medical release to return to work?**

An employer can require a return to work slip, if you had Covid-19 or were exposed to the coronavirus. However, the CDC has encouraged employers to not require such a slip, in order to avoid overburdening the medical system. If your employer requires a medical release, and you can't get one easily, be sure to explain that you can't get a slip and why and ask to be returned to work.

**► Can my employer require that I get tested for the antibody to Covid-19?**

There is no authority for an employer to limit its workforce to those who can prove they have the antibody to the virus or have recovered from Covid-19. There is no reliable, available or affordable test for this as of this date. This would and could be considered both an invasion of privacy and disability discrimination, and would unfairly prohibit those who most need their jobs from working. Employees should organize against any such draconian requirements, as well as file charges of discrimination with the DFEH or EEOC.





**► If I am applying for a job, can the potential employer ask me questions about my health and exposure to the coronavirus, take my temperature, and require a medical examination?**

If the employer isn't singling you out, a hiring employer can generally ensure that you don't have Covid-19 before starting your job. This is because the CDC has determined that an individual with Covid-19 should not be in the workplace. It could be that you are offered a job subject to passing a medical examination, in which case, your start date could be delayed until you are safe to be in a workplace.



# WAGE, INCOME REPLACEMENT, AND WORKPLACE CONTROL RIGHTS

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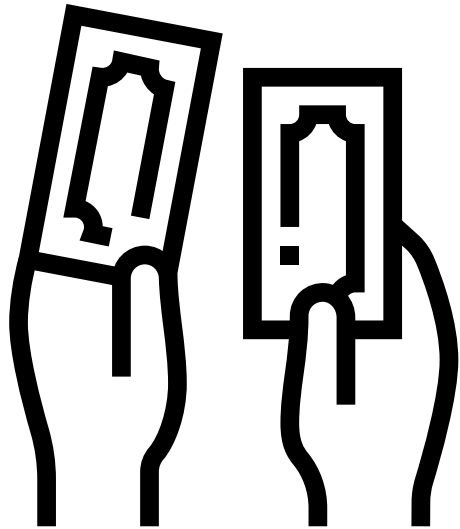
## ► What are my rights if my employer cuts my pay?

Many employers are cutting pay because the Covid-19 pandemic is hurting business cash flow. Your employer may cut your pay as long as your employer tells you in advance and, at least, pays you the minimum hourly wage. If your pay drops below the amount required to make you an exempt employee in California (\$54,080 for businesses with at least 26 employees and \$49,920 for businesses with fewer than 26 employees), you become a nonexempt or hourly employee, and your employer must pay you overtime if you work overtime, and give you mandated unpaid lunch breaks and paid rest breaks.

Even though an employer can reduce pay, it cannot do so in a discriminatory manner. (See the “Right to Be Free of Discrimination” section below.) If your employer tries to apply your pay cut retroactively, demand your prior pay rate from your employer, and file a claim with the California Labor Commission to make sure you receive it.

Your employer also can’t reduce your pay in retaliation for complaints you have made or legal action you have taken against them.

Also, while not a legal remedy, talk to your co-workers and ensure pay cuts are fair. Are management receiving pay cuts too?

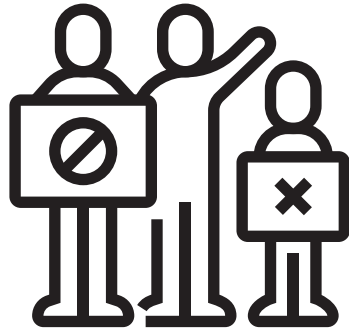


## ► What are my rights regarding unemployment insurance benefits?

### *Filing a Claim*

Your employer may not require you to waive your right to file for unemployment insurance benefits. You may file for unemployment insurance benefits even if your employer provides you with severance.

You may file for unemployment insurance benefits as long as you are unemployed. You are unemployed if, in a given week, you (1) do no work you should be paid for, or (2) work less than full-time. You work less than full time if (a) the wages you receive in a week, (b) less \$25 or 25%, whichever is greater, (c) do not equal or exceed your weekly unemployment insurance benefits.



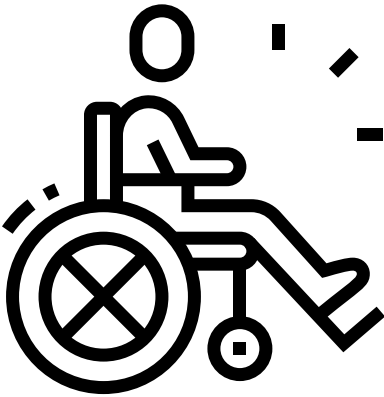
This covers situations where your employer cuts your hours, where your employer cuts your pay but not your hours, and where your employer lays you off or furloughs you (even if you are subject to recall). Note that your employer cannot ask you to keep working while accepting unemployment insurance benefits as pay. This violates the requirement that you do no work you should be paid for.

### *Retaining Eligibility While Turning Down Work*

For now, the agency that is responsible for the unemployment insurance program, Employment Development Department (EDD), is not requiring individuals working reduced hours (or even those completely laid off) to be actively seeking work in order to remain eligible for benefits. When the EDD requests certification, it advises that you (1) answer the question about whether you are looking for

work truthfully, (2) will not be penalized if you answer “no,” and (3) will be paid benefits if you meet all other eligibility requirements.

You should visit the EDD’s website at <https://unemployment.edd.ca.gov> periodically to see if it has changed its policy on seeking work. Once the EDD begins requiring recipients to actively seek work, you must generally accept any offer of suitable work. But you can refuse work if the wages, hours, or other conditions of the work offered are substantially less favorable to you than those prevailing for similar work in the locality.



You can refuse work that causes you to be a strikebreaker, that is, where the position is vacant due directly to a strike, lockout, or other labor dispute. You can also refuse work that stops you from joining a labor union or labor organization. This gives you the right to act in solidarity with workers on strike.

You can also refuse work if there are health and safety concerns.

Individuals who are older, immune-compromised, or otherwise considered high risk for Covid-19 should explain that work is unsuitable due to Covid-19 health issues.

**► Do I have any right to advocate for worker ownership and/or control?**

You and your co-workers have the right to engage in mutual aid and protection, but this does not extend to advocacy for worker ownership and control. This means that you can be lawfully fired without legal recourse for advocating for worker ownership or control of a business in which you are employed. However, the Covid-19 pandemic has opened up opportunities for this type of advocacy.

If you have been terminated from employment as a result of

business liquidation (asset sale outside of court, an assignment for the benefit of creditors, a Chapter 7 bankruptcy, or a Chapter 11 bankruptcy that becomes a liquidation), you no longer have to worry about the lack of legal right to advocate for worker ownership and/or control. You have just as much right as anyone else to put together financing, buy assets of the business, and continue operating it under a different name.

Keep in mind, however, that this may still allow a different employer to refuse to hire you. Employers can refuse to hire an applicant for a number of reasons, but pro-union beliefs are not one of those reasons. If an applicant demonstrates a genuine interest in employment but also has pro-union beliefs, that applicant cannot be removed from the hiring process because of their pro-union beliefs. If the employer removes you from the hiring process, and you had a genuine interest in employment, the employer must be able to show that they would not have hired you even if they didn't know you were pro-union. However, note, that since advocacy for worker ownership and control is not protected like general pro-union advocacy, an employer may be lawfully able to refuse to hire someone who advocates for worker ownership and control.



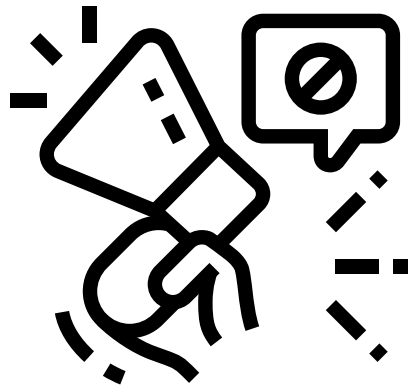
# RIGHT TO BE FREE OF DISCRIMINATION AND RETALIATION

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## ► What if I was told my lay-off was due to Covid-19-related budget cuts but I think it is discrimination or retaliation?

Your employer cannot discriminate or retaliate against you under the guise of Covid lay-offs.

Companies are allowed to lay-off employees due to lost revenue related to the Covid-19 pandemic. Employers cannot, however, use the occasion of lay-offs as an excuse to discriminate against any single employee or group of employees. For example, an employer who is laying off multiple employees cannot include the lay-off of a



pregnant employee simply because she is pregnant and the employer does not want to deal with her anticipated need for some time off. If the employer does not have a true business reason to cut the pregnant employee's job, it is discrimination and against the law.

Employers also cannot use discriminatory criteria to determine which employees to lay off and which to keep. The selection criteria for layoffs needs to be based on a company's legitimate business needs. For example, it would be against the law for an employer to lay-off half of its workforce but include all the older employees or all of the women in the group that was laid off. If it appears layoffs are targeting a group of employees, don't be afraid to organize with those employees and take one or more of the actions listed at the end of this section.

Employers also cannot include you in a lay-off as retaliation for any of the following activities (among others):

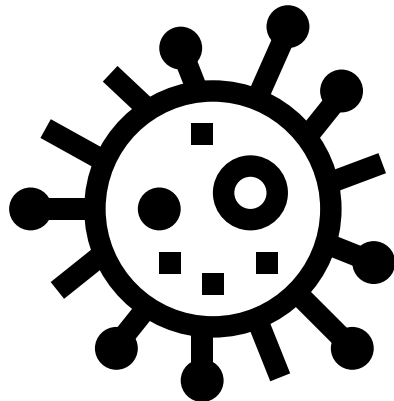
- Taking a medical leave of absence for yourself
- Taking a leave of absence to care for your newborn baby, newly adopted child or a sick family member
- Asking for an accommodation for your disability
- Complaining about sexual harassment (or any other kind of harassment) or discrimination
- Asking for protective masks at work or asking for the workplace to be clean to prevent the spread of the coronavirus
- Complaining about anything at work that you believe is unsafe or against the law

Your employer cannot fire you for any of these reasons, but it also cannot discipline you, demote you, or cut your hours or pay for these reasons.

Discrimination and retaliation related to layoffs can also be in the form of unfair policies or practices related to rehires after temporary lay-offs, not just the lay-off decisions themselves.

If you believe your lay-off is based on discrimination or retaliation, you have options:

- You should speak up and complain about it to a higher manager or human resources.
- You can also go outside of your employer and file a claim with a government agency like the federal agency,



Equal Employment Opportunity Commission (EEOC) <https://www.eeoc.gov/federal-sector/filing-formal-complaint> and/or the state agency, the California Department of Fair Employment and Housing (DFEH). <https://www.dfeh.ca.gov/complaintprocess/?content=fileComplaint#fileComplaintBody>

- If you believe you were retaliated against for complaining to your employer about workplace safety, you can file a claim with CAL-OSHA (Division of Occupational Safety and Health). <https://www.dir.ca.gov/dosh/complaint.htm>
- You should also contact a lawyer to determine your rights and the timelines to preserve your rights.

**► If my employer singles me out to ask me about my health or exposure to the coronavirus because I have a disability, or they suspect I have a disability, what can I do?**

An employer cannot single you out because you have a disability, or are more susceptible or vulnerable to the coronavirus, or are perceived to have a disability. You should ask why you are being asked about your health and make sure it is because you have actually exhibited signs of Covid-19 (such as a temperature and a dry cough) or been exposed to



those with the same, or that everyone is being asked these questions. But if you request an accommodation for your disability, your employer may ask certain questions. (See the answer to the next question for more information.) If you believe you are being treated differently due to a disability, you should complain internally, both orally and in writing to a manager or human resources, and/or file a



charge of discrimination with the EEOC and/or the DFEH. It is generally best to make sure you have filed claims with both agencies. You can do that by filing with both agencies, or making sure that whichever agency you file with, “cross files” your claim with the other.



**► If I think I am at high risk for Covid-19 in the workplace, what can I do?**

New federal guidelines in response to Covid-19 state that all high risk employees can ask for a reasonable accommodation at work during this pandemic.

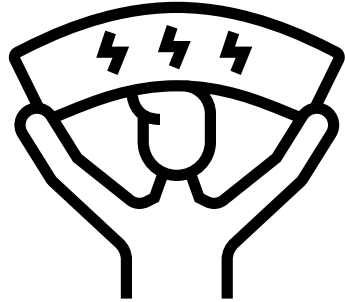
High risk employees include those who are or have any one of the following:

- Over 65 years old
- Liver disease
- Chronic kidney disease undergoing dialysis
- Diabetes
- Severe obesity
- Serious heart conditions
- Chronic lung disease or moderate or severe asthma
- Immunocompromised

High risk employees are also those who have conditions the Center for Disease Control (CDC) has found to be high risk during this pandemic. Check their website for medical conditions that are considered high risk. <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>

If you are high risk or have a disability (not every illness is a disability; a short term illness like Covid-19 may not be considered, by itself, a disability) and your doctor and you believe you need a reasonable accommodation, you should ask for one.

A reasonable accommodation is a change in the way you work or your work area to enable you to keep doing your job in light of being high risk or in light of any challenges caused by your disability. Examples of reasonable accommodations can include working from home or a flexible work schedule. The best practice is to provide a note from



your doctor indicating that you have a disability (you do not need to identify the disability), need a reasonable accommodation, and describe the accommodation needed. If you have difficulty getting in to see a doctor for any reason, you should still request a reasonable accommodation in writing. Be sure to say you have a disability (but you do not need to state the name of the disability), need an accommodation, and describe the accommodation you need.

Your employer should engage in an “interactive process” with you, which means communicate with you to make the accommodation you need workable or to find other ways to enable you to do your job without risking your health. As part of this process, if your disability is not obvious or already known, your employer may ask questions or request medical documentation to determine whether you have a disability that necessitates an accommodation as defined by the law.

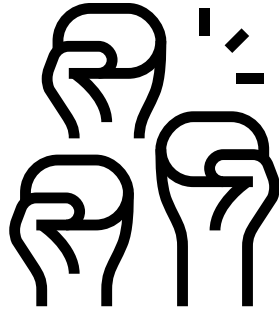
If a solution cannot be reached, you can file a charge of discrimination with the EEOC or DFEH. To fully protect your rights under state and federal law, make sure you either directly file with both agencies or cross file any claims with EEOC with the state agency, the DFEH. You can also file a lawsuit, but you must file a charge of discrimination first.

# THE RIGHT TO STRIKE AND OTHER WORK ACTIONS

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## ► What type of action can I organize or participate in to get my employer to address Covid-19 issues in the workplace?

You and your co-workers have a right to organize and employers may not “interfere” or get in the way of organizing activities. You may talk to each other about Covid-19 issues, attend meetings, pass out literature, wear buttons, and even strike.



A strike is when you and your co-workers collectively decide to stop working, for short or long periods of time. Workers everywhere, including those at Whole Foods, Uber, General Electric, fast food places, and other worksites have been striking during the coronavirus pandemic to demand better conditions such as:

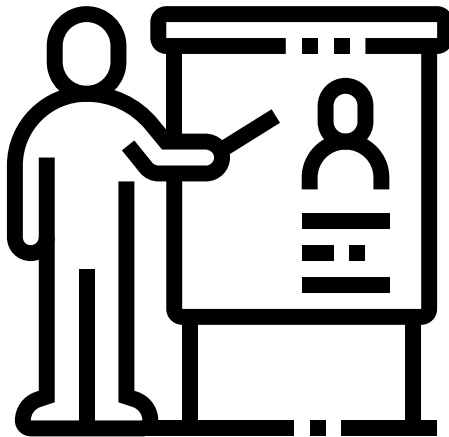
- personal protective equipment, like face masks, sanitizer, and gloves,
- paid leave;
- health care benefits;
- hazard pay, which means pay for dangerous conditions;
- coronavirus testing;
- that their factories make ventilators;
- reinstating coworkers terminated for organizing activity; and
- other improvements.

Employers may not conduct surveillance of your meetings, threaten to punish you, disfavor you based on organizing activity, issue rules to stop you from protesting, or shut down the worksite in order to discourage organizing.

Importantly, you and your co-workers can walk off the job if there are “abnormally dangerous” conditions, like exposure to airborne toxins. Other actions include going to the employer as a group, known as a delegation; sick-outs where you collectively call in sick; slowing down work production; and calling for boycotts.

The National Labor Relations Act protects the right to strike. For complaints related to worksite organizing, whether you are union or not, contact the National Labor Relations Board at <https://www.nlr.gov/>.

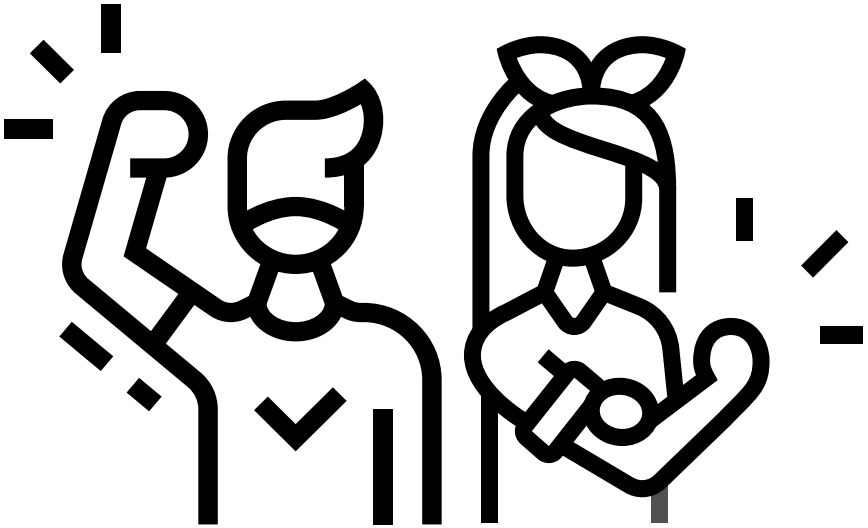
If you are being asked to work under unsafe conditions, you may file a Labor Code claim under California Labor Code section 6310 with the Division of Labor Standards and Enforcement at <https://www.dir.ca.gov/dlse/>.



# PROTECTING YOUR RIGHTS



During this period of severe economic stress for many people, the National Lawyers Guild continues to be “in the service of the people, to the end that human rights and the rights of ecosystems shall be regarded as more sacred than property interests.” It is more important than ever in these times to protect the human rights to work, just conditions of work, protection against unemployment, and just pay to ensure a standard of living adequate for the health and well-being of oneself and one’s family. In order to do this, it will take individual action to protect rights and collective action to advocate for basic change in the structure of our political and economic system.



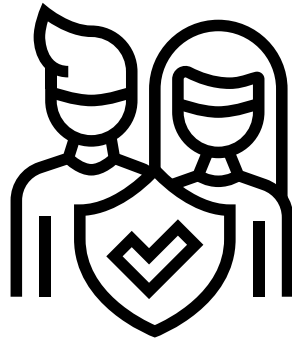
# FURTHER RESOURCES

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Employment Development Department (EDD) Contact Information:

Get help with filing a claim by phone or getting payment information. Hours: 8 a.m. to 12 noon (Pacific time), Monday through Friday except state holidays.

- English: 1-800-300-5616
- Spanish: 1-800-326-8937
- Cantonese: 1-800-547-3506
- Mandarin: 1-866-303-0706
- Vietnamese: 1-800-547-2058
- TTY: 1-800-815-9387



Automated Self-Service Line: Get information on how to file a new claim or reopen an existing claim and your last payment issued. You can also certify for benefits using EDD Tele-Cert<sup>SM</sup>, request copies of your 1099G tax information, and find your local America's Job Center of California<sup>SM</sup>.

English: 1-866-333-4606  
Spanish: 1-866-333-4606

## **Department of Labor, Wage and Hour Division (WHD)**

1-866-4US-WAGE (1-866-487-9243)  
[www.dol.gov/agencies/whd](http://www.dol.gov/agencies/whd)

## **Department of Fair Employment and Housing (DFEH)**

800-884-1684 (voice); 800-700-2320 (TTY)  
<https://www.dfeh.ca.gov>

## **Department of Labor Standards Enforcement (DLSE)**

844-LABOR-DIR (or 1-844-522-6734)  
<https://www.dir.ca.gov/dlse>

## **Center for Independent Living, Inc.**

510-841-4776

<https://www.thecil.org>

## **Division of Workers' Compensation**

800-736-7401

<https://www.dir.ca.gov/dwc/dir2.htm>

## **California Occupational Safety & Health (CalOSHA)**

1-800-963-9424

<https://www.dir.ca.gov/dosh/InfoCons@dir.ca.gov>

## **Rapid Response Business Triage Helpline**

833-391-1919

**Bet Tzedek** (re: EIP/Stimulus Checks or Tax-related COVID-19 questions)

323-939-0506

Leave a message stating whether it is a “stimulus” or tax matter

## **Job Accommodation Network**

(800) 526-7234 (voice); (877) 781-9403 (TTY)

<https://askjan.org>

Additional help from the government and private organizations if you lost work or income because of the pandemic:

Legal Aid at Work has compiled a list of known relief funds for undocumented workers at

<https://legalaidatwork.org/blog/relief-funds>

To apply for CalFresh, California’s SNAP program, go to

<http://mycalfresh.org>

To find a food bank near you, go to

<http://cafoodbanks.org/find-food-bank>

If you need health coverage right away, you should apply for MediCal and see if you are eligible for assistance in getting private insurance at <https://www.coveredca.com/apply>



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Dedicated to the principle that human and civil rights are more sacred than property rights, the National Lawyers Guild seeks to unite lawyers, law students, legal workers and jailhouse lawyers to function as an effective political and social force to protect and defend communities, social justice movements, and political grassroots organizations and activists organizing for those rights.

NLG-SF provides legal and political education, know your rights trainings, legal observers and other support for demonstrations. We also run several committees focusing on different areas of social and ecological justice.

If you have questions and/or would like to get involved, please email us at [contact@nlgsf.org](mailto:contact@nlgsf.org)