



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

*A Joint Powers Authority  
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## LEGAL UPDATE

March 17, 2020

**To:** Superintendents/Presidents/Chancellors, Member Community College Districts

**From:** Kaitlyn A. Schwendeman, Schools Legal Counsel KAS

**Subject:** COVID-19 Updates  
Memo No. 08-2020(CC)

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In this time of continuing change, we are providing community colleges with an update on the impact of COVID-19. We have provided a Frequently Asked Question (“FAQ”) document with this Update, which provides answers to many common questions surrounding COVID-19’s impact on public school employment.

On March 16, 2020 the Governor issued an Executive Order providing relief and direction to K-12 schools. This Executive Order and subsequent clarifying legislation does not apply to community college districts. However, on March 16, 2020, the Chancellor’s Office issued an update on COVID-19 with helpful resources for community colleges.<sup>1</sup>

Importantly, the Chancellor’s Office has issued the following recommendations for all community colleges:

- Substantially limit all in-person interaction on campuses through June.
- Continue to move instruction to remote learning platforms.
- Consider reconfiguring all commencement ceremonies and pinning ceremonies to limit event size or move to a virtual format.
- Cancel, postpone or move to a remote format all events, large meetings or conferences for the remainder of the year. This includes moving public board meetings to a remote format.
- Institute remote work protocols for eligible employees in consultation with local bargaining units.
- Consider the strong possibility of a slowdown in the state’s economy as you review on-going expenditures.

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<sup>1</sup> Available at: <https://www.cccco.edu/-/media/CCCCO-Website/Files/Communications/COVID-19/covid-19-special-udpate-email-march162020.pdf?la=en&hash=1953B041995085639932C0E0BB20A1912CC065FA/>



If your college has not yet submitted an application for an Emergency Distance Education Blanket Addendum, you are strongly encouraged to submit one at this time.<sup>2</sup> These applications can be submitted pre-emptively, if you wish to continue to maintain face-to-face instruction in the immediate future.

The Chancellor's Office is providing webinars and resources for colleges transitioning to remote learning.

Finally, the Chancellor's Office has requested that all colleges cancel their financial aid outreach for the remainder of the spring term. There will be no penalty assessed for failing to hold these events.

Please contact our office with questions regarding this Legal Update or any other legal matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

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<sup>2</sup> Information on submitting this application can be found here: <https://www.cccco.edu/-/media/CCCCO-Website/Files/Communications/COVID-19/es-20-07-emergency-temporary-distance-education-blanket-addendum.pdf?la=en&hash=4946BCE7223A165C44EEF194EDAF5929EF3E3FC7>

## **General Questions**

### **1. How does COVID-19 impact Board Meetings?**

On Thursday, March 12, 2020, the Governor issued Executive Order N-25-20, which waived certain parts of the Brown Act. For now, governing boards of community college districts may, in order to prevent the spread of COVID-19, hold board meetings by teleconference with no quorum of board members in the district's geographic boundaries, without having board members physically present, without having to post an agenda or allow public access at each board member's teleconference location, and without having to post each teleconference location on the agenda. However, boards are only privy to these exceptions if they notice at least one publicly accessible location from which the public can attend and observe the meeting, and otherwise comply with the pre-existing Brown Act notice requirements of 72 hours for a regular board meeting, 24 hours for a special board meeting, or less than 24 hours for an emergency board meeting.

For additional information on this topic, please see Legal Update 07-2020, "Governor's March 12, 2020 Executive Order N-25-20 Regarding Teleconferencing of Board Meetings; and Emergency Meeting Requirements under the Brown Act."

## **Personnel Matters**

### **2. Can I require academic employees to perform non-instructional tasks such as cleaning, or classified staff to provide duties outside their normal job duties?**

The Governor of California has declared a state of emergency due to COVID-19. Community college employees are considered disaster service workers under Government Code Section 3100 and are subject to disaster service assignment in an emergency. Examples of disaster service assignments may include cleaning or other tasks based on the needs of the college during this time. This applies whether or not the college chooses to close or provide instruction via remote learning.

### **3. Can I require that employees use their accrued paid leave time if they are self-quarantined, or if the college imposes a quarantine?**

If the employee self-quarantines, the college may require that the employee use any accrued leave. Colleges are encouraged to apply leave policies liberally in this instance.

If the employee is quarantined by the college or a physician, the employee should be required to utilize sick leave and/or extended illness leave.

As always, we recommend that colleges check their applicable collective bargaining agreements and policies for any requirements beyond those set forth in the law.

### **4. Am I required to pay staff who are unable to work due to their own childcare needs?**

The college may require that the employees use accrued leave time for any time they are unable to provide services due to childcare or other needs.

Colleges are encouraged to be flexible during any period of closure to recognize employees' childcare needs. Colleges may ask employees to work remotely or to provide services during a time that would not conflict with their childcare obligations.

**5. May I exclude staff over 65 or those with preexisting health conditions which make them more susceptible to COVID-19?**

It depends. If such employees are exhibiting any symptoms of COVID-19, you may exclude them. Additionally, the EEOC recommends that for these employees not displaying symptoms but who are otherwise at enhanced risk, the college engage in the interactive process to determine whether the employee should be excluded. Colleges should not unilaterally exclude these employees who are not exhibiting symptoms without first engaging in the interactive process.

**Collective Bargaining**

**6. My college received a demand to bargain from one of our unions. Do I have to respond?**

Yes, a college must respond to a demand to bargain. Please contact our office if you have specific questions regarding this process.

**7. Am I required to provide the information requested by the union in their demand to bargain letter?**

To the extent that any information requested is available and the information is "necessary and relevant" to the request, your college should make the information available to the union in a reasonable amount of time. PERB has held that information "immediately pertaining to mandatory subjects of bargaining [are] presumptively relevant." Changes to location and manner of providing work are both mandatory subjects of bargaining.

Examples of requests that are necessary and relevant and would have to be provided:

- Policies and/or procedures relating to college decision to transition to remote learning.
- Policies and/or procedures relating to college protocol to prevent spread of infectious disease.
- Policies and/or protocols relating to college imposition of quarantine.

**8. Exclusive representatives have provided a draft Memorandum of Understanding. Should I sign it?**

Our office has received copies of many Memorandums from various unions. Please contact us to address this for your specific college, prior to signing the MOU.

**9. Am I required to provide information to unions regarding any employee who is confirmed or may have COVID-19?**

Employee medical information is confidential and should not be disclosed to union representatives or anyone else, except as explicitly permitted by law. It is permissible to notify the union that an employee has tested positive for COVID-19, provided personally identifiable information about the employee is not disclosed.

**10. What should we do about scheduled collective bargaining meetings?**

We recommend that the meeting be scheduled to occur via video/tele-conferencing, or other alternative means. In the alternative, we recommend that meetings be postponed, with an explanation for the postponement, referring to COVID-19 and health/safety concerns, sent to the union in writing.

If your college wants to hold in-person collective bargaining, we recommend a location which allows for social distancing of at least 3-6 feet between participants, and adherence to all CDPH guidelines for meetings. Please keep in mind that this same recommendation applies to caucus meeting rooms.