

Industry Guidance: Re-opening the Real Estate Broker Office FAQ

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Tel (213) 739-8282
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Q1: Can I re-open my real estate office workplace?

A1: Yes, unless there are stricter rules in your city and/or county that prevent you from re-opening. Although Governor Newsom's March 19, 2020 stay-at-home order is still in effect, because real estate is an "essential service," real estate office workplaces can open as long as health and safety protocols are followed. The State's guidelines for real estate office workplaces apply to every jurisdiction within California. Once again, your local city and/or county may have stricter guidelines. C.A.R. reminds you to adhere to any stricter requirements.

As described below, in order to re-open your office workplace, you must make modifications and establish policies to reduce the risk of COVID-19 infections and establish a safe environment for workers and the public. You should review California's "COVID-19 Industry Guidance: Real Estate Transactions" and the related checklist: <https://covid19.ca.gov/pdf/guidance-real-estate.pdf> and <https://www.cdph.ca.gov/pdf/checklist-real-estate.pdf>

You should also refer to the CDPH's "Guidance for the Use of Face Coverings" https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Guidance-for-Face-Coverings_06-18-2020.PDF, CAL/OSHA's more comprehensive guidance on their webpage "CAL/OSHA Interim General Guidelines on Protecting Workers from COVID-19" at <https://www.dir.ca.gov/dosh/coronavirus/General-Industry.html> in addition to the CDC's requirements for businesses and employers: https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fguidance-business-response.html

There are additional State requirements for showing properties. Please refer to C.A.R.'s "Industry Guidance Showing Rules FAQ" and "Mandatory Government Showing Requirements, Including Best Practices Guidelines and Prevention Plan (available within the COVID library in zipForm®).

Q2: In light of all the health and safety requirements, should I re-open my office workplace right now?

A2: Based on the numerous requirements for re-opening an office workplace, many real estate brokers may decide to continue using teleworking to the extent possible. Your decision on whether this is the "right" time to open your office workplace will likely depend on such factors as the physical layout of your office, the number of employees, your staff's ability to telework, your company's business needs, and available resources. The State requirements described below will take a considerable amount of planning, time, and labor and will require continuing staff and financial resources. For example, you may need to make structural changes to your physical office, create and post various signs, arrange for more frequent cleaning, purchase protective equipment, face coverings, hand sanitizer and other supplies, and adjust employee work schedules to reduce the number of people in the office at the same time, among other things. You may also need to obtain information from your legal, financial and insurance advisors. Ultimately, you must use your best judgment regarding your company's specific business needs and your ability to comply with the State Guidance, CAL/OSHA, and CDC requirements, along with any applicable local requirements.

Q3: If I decide to re-open my office workplace, do I have to allow all of my workers to return at the same time?

A3: No, the State's Guidelines include physical distancing guidelines for workplaces, and specifically state that employers, when feasible and necessary, should limit the number of workers in the office at one time. Employers can achieve this by having workers return to the office in phases, staggering daily work schedules or establishing alternate days for on-site work, and/or continuing the use of telework.

Q4: Can I take steps to protect workers who are considered to be more vulnerable to COVID-19 infection and serious complications from COVID-19?

A4: Probably; however, the answer will depend on your company's specific policy and the particular facts of your situation. You may wish to consult with an employment lawyer to make sure your policy is consistent with anti-discrimination and other laws. The State Guidelines recognize that some people have a higher risk of hospitalization and serious complications from COVID-19, including people aged 65 or older and those with serious underlying medical conditions, such as heart or lung disease or diabetes. The State Guidelines include a reminder to employers that additional requirements must be considered for vulnerable populations and therefore appear to encourage employers to take additional steps to protect vulnerable workers.

Q5: What are the required health and safety protocols for the office workplace?

A5: For the office workplace, there are five main categories of requirements. To open the office workplace, you need to: 1) Establish a workplace specific plan; 2) Conduct training for your employees, independent contractors, temporary workers and others who are working in the office workplace; 3) Implement individual control measures and screening; 4) Follow cleaning and disinfecting protocols; and 5) Implement measures to ensure physical distancing. Each of these five categories are described in more detail below.

Q6: Don't I need a separate COVID-19 prevention plan for my agents who are showing properties?

A6: Yes, in addition to the COVID-19 prevention plan for your office workplace, you will also need a COVID-19 prevention plan specifically for showing properties. C.A.R. has created the "Mandatory Government Showing Requirements, Including Best Practices Guidelines and Prevention Plan," which may serve as the COVID-19 prevention plan for showing properties.

Q7: How do I create a COVID-19 prevention plan for the office workplace?

A7: The State Guidelines require a written, workplace-specific COVID-19 prevention plan at every facility. Your written plan will incorporate the CDPH's "Guidance for the Use of Face Coverings," include contact information for your local health department (for communicating information about COVID-19 outbreaks among workers) and the name of the designated person(s) in the office who is responsible for implementing the plan. You must perform a risk assessment of all work areas and make appropriate modifications. For example, you may need to move or remove some furniture in the lobby area and conference rooms so that people will remain 6 feet apart, you may need to post a sign by the elevator reminding people to wear face coverings in the elevator and not to ride the elevator together, you may need to allow some workers to telework or plan for staggered work hours to decrease the number of workers who are in the workplace at the same time, etc.

After you have created your initial written prevention plan for your workplace, you should regularly check your workplace to ensure it complies with the prevention plan. If you discover a deficiency, you should make appropriate corrections.

In order to help you, C.A.R. has created a Sample COVID-19 prevention plan for the real estate office workplace that you may use to fill out the above information. The Sample COVID-19 prevention plan can be accessed here: <https://www.car.org/riskmanagement/covidlegaldocs>

Q8: What do I need to do if I discover a COVID-19 illness in the office workplace?

A8: If there is a COVID-19 illness in the workplace, you (or the person responsible in your office) should: 1) **Report** the information to your local health department; 2) **Investigate** the COVID-19 illness and determine if any work-related factors could have contributed to the risk of infection and implement the necessary processes and protocols when a workplace has an outbreak, in accordance with the CDPH guidelines <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Workplace-Outbreak-Employer-Guidance.aspx> 3) **Identify** close contacts (within 6 feet for 15 minutes or more) of an infected employee and take steps to isolate COVID-19 positive employee(s) and close contacts; and 4) **Update** your prevention plan as needed to prevent further COVID-19 cases.

It is important to have appropriate processes in place to identify new cases of COVID-19 illness and, when an illness is identified, to intervene quickly and work with health authorities to stop spread of the virus.

Q9: What information should be included in employee and real estate licensee training on COVID-19 prevention?

A9: The State Guidelines contain a list of the information that should be covered during training of employees, real estate licensees, and other workers. Remember to ensure that any temporary, contract, and all other workers at the facility are also properly trained in COVID-19 prevention policies and have necessary PPE. If you use another organization to supply workers (such as a temp agency), discuss these training responsibilities ahead of time with those organizations.

COVID-19 training should include:

- 1) **Real estate licensees** should be provided with: 1) C.A.R.'s "Mandatory Government Showing Requirements, Including Best Practices Guidelines and Prevention Plan," and 2) California's "COVID-19 Industry Guidance: Real Estate Transactions" at: <https://covid19.ca.gov/pdf/guidance-real-estate.pdf> which contain information on showing properties, physical distancing, and other important topics.
- 2) Information on COVID-19, how to prevent it from spreading, and which underlying health conditions may make some individuals more susceptible to contracting the virus.
- 3) Providing information on how to conduct self-screening at home, including temperature and/or symptom checks using CDC guidelines.
- 4) Advice on the importance of not coming to work if the employee or real estate licensee has symptoms of COVID-19 as described by the CDC such as a cough, fever, shortness of breath or difficulty breathing, chills, fatigue, muscle or body aches, headache, sore throat, new loss of taste or smell, congestion or runny nose, nausea, vomiting, or diarrhea, OR if they were diagnosed with COVID-19 and have not yet been released from isolation OR if, within the past 14 days, they have had contact with someone who has been diagnosed with COVID-19 and is considered potentially infectious (i.e., still in isolation)
- 5) Advice on protocols for returning to work after a worker receives a COVID-19 diagnosis. Return to work only if 10 days have passed since symptoms first appeared, their symptoms have improved, and the worker has had no fevers (without the use of fever reducing medications) for the last 72 hours. A worker without symptoms who was diagnosed with COVID-19 can return to work only if 10 days have passed since the date of the first positive COVID-19 test.
- 6) Advice to seek medical attention if their symptoms become severe, including persistent pain or pressure in the chest, confusion, or bluish lips or face. (Updates and further details are available on CDC's webpage).
- 7) Remind on the importance of frequent handwashing with soap and water, including scrubbing with soap for 20 seconds (or using hand sanitizer with at least 60% ethanol or 70% isopropanol when the employee or real estate licensee cannot get to a sink or handwashing station, per CDC guidelines).
- 8) Discussing the importance of physical distancing, both at work and off work time to reduce the risk of COVID-19 infections.
- 9) Providing information about the proper use of face coverings, including:
 - o Face coverings do not protect the wearer and are not personal protective equipment (PPE).
 - o Face coverings can help protect people near the wearer, but do not replace the need for physical distancing and frequent handwashing.
 - o Face coverings must cover the nose and mouth.
 - o To help prevent infection, employees and real estate licensees should wash or sanitize hands before and after using or adjusting face coverings.
 - o To help prevent infection, employees and real estate licensees should avoid touching eyes, nose, and mouth.
 - o To help prevent infection, face coverings must not be shared and should be washed or discarded after each shift (or other regular, frequent interval).

10) Information contained in the CDPH's "Guidance for the Use of Face Coverings," which mandates the circumstances in which face coverings must be worn and the exemptions, as well as any policies, work rules, and practices the company has adopted to ensure the use of face coverings. Training should also include the company's policies on how people who are exempted from wearing a face covering will be handled.

11) Discuss information on employer or government-sponsored leave benefits workers may be entitled to receive that would make it financially easier to stay at home, including employee's sick leave rights under the Families First Coronavirus Response Act and rights to workers' compensation benefits and presumption of the work-relatedness of COVID-19 pursuant to the Governor's Executive Order N-62-20 (see more information below regarding this Executive Order). See additional information on government programs supporting sick leave and workers' compensation for COVID-19 here: <https://www.labor.ca.gov/coronavirus2019/#chart>

12) Advise workers on how they may access a copy of the Company's COVID-19 office workplace prevention plan.

Q10: How should my office workplace implement individual control measures and screening for COVID-19? Do I need to provide temperature and/or symptom screening?

A10: The State Guidelines instruct employers to provide temperature and/or symptom screenings for all employees before they begin work, in addition to any vendors, contractors, or other workers entering the office workplace. Furthermore, if such temperature/symptom screening is being performed at the office workplace, then both the screener and the person being screened should avoid close contact to the extent possible and wear face coverings for the screening. As an alternative, the State Guidelines allow self-screening at home, and instruct that if the employer is "requiring self-screening at home, which is an appropriate alternative to providing it at the establishment, the employer should ensure that screening was performed prior to the worker leaving the home for their shift and follows CDC guidelines." **Accordingly, employers may decide to conduct temperature screening or symptom screening at the office workplace prior to allowing entry (symptom screening would include asking questions regarding the presence of any COVID-19 symptoms such as whether the employee has a fever, frequent cough, difficulty breathing, chills, muscle pain, and other symptoms of COVID-19); and there is also the alternative of requiring self-screening to take place at home.**

In addition to the above, in order to implement individual control measures and screening for COVID-19, employers should:

- 1) Encourage workers and clients or customers who are sick or exhibiting symptoms of COVID-19 to stay home.
- 2) Provide and ensure workers use all required protective equipment, including face coverings, eye protection, and gloves where necessary.
- 3) Consider where disposable glove use may be helpful to supplement frequent handwashing or use of hand sanitizer; examples are for workers who are screening others for symptoms or handling commonly touched items.
- 4) The company, brokers, and real estate licensees must take reasonable measures, including posting signage in strategic and highly-visible locations and in reservation confirmations, to remind clients that they must use face coverings and practice physical distancing, and should frequently wash their hands with soap for at least 20 seconds, use hand sanitizer, and not touch their face when viewing a property in person.
- 5) Guests should be reminded in advance to bring a face covering and the company will make face coverings available to anyone who arrives without one, if possible.

Q11: What are the cleaning and disinfecting protocols for office workplaces?

A11: The State Guidelines contain the below cleaning and disinfecting protocols. Your company should review these protocols and take the actions necessary and/or appropriate based on your company and its worksite(s):

- 1) Perform thorough cleaning on high traffic areas of offices and other shared workspaces (lobbies, meeting rooms, break rooms, etc.) and areas of ingress and egress (handrails, stairwells, elevator controls, etc.). Frequently disinfect commonly used surfaces in shared work areas like counters, light switches, door handles, etc.
- 2) Avoid sharing phones, other work supplies, or office equipment wherever possible. Never share PPE.
- 3) Where such items must be shared, disinfect with a cleaner appropriate for the surface between shifts or uses, whichever is more frequent, including the following: shared office equipment, such as copiers, fax machines, printers, telephones, keyboards, staplers, staple removers, letter openers, surfaces in reception areas, shared work stations, etc.
- 4) Instruct workers to wipe down and disinfect equipment that passes between workers and customers, including clipboards and keys after each use.
- 5) Equip workplace terminals and desks with proper disinfecting products, including hand sanitizer and sanitizing wipes and provide personal hand sanitizers to all workers.
- 6) Provide time for workers to implement cleaning practices at their workplaces during their shift. Cleaning assignments should be assigned during working hours as part of the worker's job duties.
- 7) Ensure that sanitary facilities stay operational and stocked at all times and provide additional soap, paper towels, and hand sanitizer when needed.
- 8) Install and encourage the use of hands-free devices, if possible, including motion sensor lights and automatic soap and paper towel dispensers.
- 9) When choosing disinfecting chemicals, employers should use products approved for use against COVID-19 on the Environmental Protection Agency (EPA)-approved list and follow product instructions. Use disinfectants labeled to be effective against emerging viral pathogens, diluted household bleach solutions (5 tablespoons per gallon of water), or alcohol solutions with at least 70% alcohol that are appropriate for the surface. Provide workers training on the chemical hazards, manufacturer's directions and Cal/OSHA requirements for safe use. Workers using cleaners or disinfectants should wear gloves and other protective equipment as required by the product instructions. Follow the asthma-safer cleaning methods recommended by the California Department of Public Health and ensure proper ventilation. <https://www.cdph.ca.gov/Programs/CCDCPH/DEODC/OHHP/Pages/OHWMay2020.aspx>
- 10) Require workers to clean and disinfect personal work areas often and supply the necessary cleaning products.
- 11) Modify hours if necessary, to ensure regular, thorough cleaning of office spaces. Where possible, do not clean floors by sweeping or other methods that can disperse pathogens into the air. Use a vacuum with a HEPA filter wherever possible.
- 12) Consider installing portable high-efficiency air cleaners, upgrading the building's air filters to the highest efficiency possible, and making other modifications to increase the quantity of outside air and ventilation in offices and other spaces.

Q12: What are the physical distancing guidelines for workplaces?

A12: The State Guidelines provide information and suggestions on how to implement physical distancing in an office workplace. Your company should review these, and take the actions necessary and/or appropriate based on your company and its worksite(s):

- 1) Implement measures to ensure physical distancing of at least six feet between employees, real estate licensees, and customers. This can include use of physical partitions or visual cues (e.g., floor markings or signs to indicate where persons should stand).
- 2) Utilize work practices, when feasible and necessary, to limit the number of employees and real estate licensees at the office at one time. This may include scheduling (e.g., staggering start/end times), establishing alternating days for on-site reporting, returning to the office workspace in phases, or continued use of telework when feasible.
- 3) Redesign office spaces, cubicles, etc. and decrease the capacity for conference and meeting rooms to ensure workspaces allow for six feet between employees, real estate licensees or others.
- 4) Designate separate routes for entry and exit into office spaces to help maintain social distancing and lessen the instances of people closely passing each other, if possible. Establish directional hallways and passageways for foot traffic, if possible, to eliminate persons from passing by one another.
- 5) Close or restrict areas, using barriers, or ensure physical distancing by separating tables/chairs in common areas where people are likely to congregate and interact, such as kitchenettes and break rooms. Discourage employees, real estate licensees and others from congregating in high traffic areas such as bathrooms and hallways. Limit the number of individuals riding in an elevator and ensure the use of face coverings.
- 6) Close self-service coffee, water, and snack areas. Provide individual water bottles if there is no other suitable potable water source.
- 7) Consider offering workers who request modified duties or options that minimize their contact with customers and others (e.g., managing inventory rather than working as a cashier or managing administrative needs through telework).
- 8) Stagger worker breaks, within compliance with wage and hour regulations, to maintain physical distancing protocols.
- 9) Display signage at entrances and waiting areas to remind people of physical distancing, proper hand hygiene, and face covering usage at every opportunity. Dedicate staff to direct guests to meeting rooms upon entry to office space rather than congregating in lobbies or common areas.
- 10) Discontinue nonessential travel and encourage distance meetings via phone and internet.
- 11) Discontinue shared vehicle trips between workers, contractors, clients, etc. Each party should travel in their own vehicle to offices, properties, or other locations that require in-person activities.
- 12) Require workers to avoid handshakes and similar greetings that break physical distance.
- 13) Avoid passing transaction materials such as pens, paperwork, and keys back and forth between workers and customers.
- 14) Complete real estate transactions with all related parties digitally if feasible. Maintain physical distance when in-person meetings are required with escrow agents, loan officers, mortgage brokers, etc. Meet in spaces that allow for at least six feet of physical distance, such as outside.
- 15) Eliminate person-to-person contact for delivery of goods to physical offices. Avoid touching others' pens and clipboards.

Q13: How does Governor Newsom's Executive Order N-62-20 affect workers' compensation insurance?

A13: Governor Newsom's May 5, 2020 executive order changed the way that COVID-19 worker's compensation claims presumptively met the work-related test. Previously, the injured employee had the burden to prove the exposure to COVID-19 arose out of and in the course of their employment. Under this executive order, the burden shifted to the employer to provide rebuttal evidence proving the exposure was not work related. This presumption is available for employees who tested positive or were diagnosed with COVID-19 within 14 days of performing a labor or service at a place of work after the March 19, 2020 stay-at-home order. This presumption was in place for 60 days after the issuance of the executive order, until July 5, 2020.

After the 60-day timeframe, employees can still submit a claim for workers' compensation for COVID-19, but it will no longer be presumed to have occurred at a workplace. Because this executive order made it easier for workers to obtain insurance benefits, there will likely be more claims being paid by workers' compensation insurance in California and an increase in future costs of insurance.

Q14: If an employee is exposed to COVID-19 and/or gets sick, can he or she use paid sick days?

A14: California

Yes, if the employee meets certain requirements. Under California law, employees who (1) work for a same employer for at least 30 days within a year, and (2) satisfy a 90-day employment period before taking any sick leave are entitled to take at least 3 days of paid sick leave. Several California cities (including Los Angeles, Santa Monica, Berkeley, Emeryville, Oakland, San Diego, and San Francisco) provide for more expansive sick leave. Note that an employee does not need to actually be diagnosed with coronavirus to take paid sick days – for example, an employee can use sick days for preventative care that may include self-quarantine after possible exposure. More information about paid sick leave under California state law can be found here: https://www.dir.ca.gov/dlse/paid_sick_leave.htm.

Federal

Under the FFCRA, employers with less than 500 employees must provide employees with two weeks of paid sick leave if the employee is unable to work (or work remotely) because the employee is subject to a quarantine order or has been advised by a health care professional to self-quarantine; the employee is experiencing symptoms of COVID-19; the employee is caring for an individual who is subject to quarantine; or if the employee is caring for a child whose school or childcare providers are closed. Employers subject to this provision of the FFCRA will receive tax credits to offset the cost of providing the paid sick leave. Additional details about paid sick leave and the FFCRA are found here: www.carcovidupdates.org/guidance-for-employers

Q15: Where can I obtain additional information?

A15: This legal article is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit car.org.

Readers who require specific advice should consult an attorney. C.A.R. members requiring legal assistance may contact C.A.R.'s Member Legal Hotline at (213) 739-8282, Monday through Friday, 9 a.m. to 6 p.m., and Saturday, 10 a.m. to 2 p.m. C.A.R. members who are broker-owners, office managers, or Designated REALTORS® may contact the Member Legal Hotline at (213) 739-8350 to receive expedited service. Members may also submit online requests to speak with an attorney on the Member Legal Hotline by going to <http://www.car.org/legal/legal-hotline-access/>. Written correspondence should be addressed to:

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The information contained herein is believed accurate as of July 13, 2020. It is intended to provide general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney. Written and revised by Jenny Li, Esq.

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