



# Challenges Facing California Restaurants Today



## Presented By:



**Bruno W. Katz**

Partner – San Diego

619.881.3317

[bruno.katz@wilsonelser.com](mailto:bruno.katz@wilsonelser.com)

## Hosted By:




**Natasha Price**

Partner Care Manager

916.431.2745

[nprice@calrest.org](mailto:nprice@calrest.org)



The presentation is provided is for informational purposes only and should not be relied upon for legal advice. Your participation in this webinar does not create an attorney-client privilege.

# Questions?



Ask questions in the *Questions* section  
or  
Email Natasha Price at [nprice@calrest.org](mailto:nprice@calrest.org).

We will post the presentation and Q&A after the webinar.





# Latest EEOC Guidance

# Gating Procedures



# Screening of Employees

- Temperature Checks
- Symptom Questions or Self-Reporting
- PPE



# Alternative Screening – Medical Condition



- Request for Reasonable Accommodation
- Treat it same as any other request
- May ask for Medical Documentation
- Undue Hardship
- Examine Religious Requests





# Gating Procedures: FAQ's

- An employer wants to do temperature checks, but apparently the thermometers that you could use to check from a distance (e.g. infrared?) are simply not available and have been sold out for weeks. What should an employer do?
- The physician sends a letter that says only that the employee is in a high risk category and it has been recommended that they work remotely if possible – but, not that they have been instructed to quarantine or isolate. If the risk is age group, does the employer have to honor the accommodation?
- What about high risk employees whose physicians are advising them not to go back to work even when the employer has opened and taken recommended safeguards until such time as the overall risk has been reduced to acceptable levels?



# Accommodation Requests



# Reasonable Accommodation



- Pre-existing condition or accommodation?
- Is stress a disability?
- Interactive process
- Undue hardship
- Balance between safety and disability



# COVID-19-Related Associational Disability



- Request to avoid exposure of a family member in high risk group
- No requirement to accommodate an employee
- Potential exposure to COVID-19 alone does not need to be accommodated



# Best Practices-Return to Work



- Written Advance Notice of Return
- Identification of POC for Questions and Accommodation
- Notice can include Medical Conditions listed by CDC
- Case by Case Analysis
- Interactive Process before Return to Work Date



# Discrimination and Harassment Risks FAQs



# Higher Risk Employees



The CDC has indicated that individuals 65 and over are at a higher risk for a severe case of COVID-19? Also the federal government has indicated a few times that employers might want to bring older workers back to protect them from exposure? I think this is a good idea and I will bring back my older workers not initially. I assume this is okay?



# Pregnancy



We have several employees who were furloughed that are now pregnant or were pregnant at the time of the shelter at home order. I want to protect my employees who are pregnant from exposure in bringing them back to work. Can I exclude an employee who is pregnant for health and safety reasons?





# Caregiver/Family Responsibilities



Several of our female employees have young children who are still at home because of school closures or child care closures. Am I required to be accommodate these requests? How flexible do I have to be?



# Caregiver/Family Responsibilities



Several of our female employees have young children who are still at home because of school closures or child care closures. Am I required to be accommodate these requests? How flexible do I have to be?



# Avoiding Harassment and Discrimination



No one wants to shake hands any more. However, I (as a male) feel uncomfortable bumping “elbow” with females because I am concerned about unintentional contact with other body parts. Can I refrain from elbow bumping with females even though I may do it to males? Is this discrimination?



# Avoiding Harassment and Discrimination



I have a deaf employee who reads lips to communicate. Do I have to pull my mask off when communicating with her or can I ask her about alternate methods of communication?



# Avoiding Harassment and Discrimination



I have heard some employees refer to COVID-19 as the Chinese virus – can I tell them to stop using this term? Also some of the employees have been posting on social media and e-mailing about concerns about working with Chinese employees. This was done on off-duty time, is this unlawful harassment?



# Avoiding Harassment and Discrimination



We have had a vigorous take-out service even though we are starting dining-in procedures. We have had some orders from police officers that employees have not filled. When we brought this up, the employees said they were uncomfortable providing service to police officers. What actions can I take to make sure the employees fill all orders? Do I face liability if I discipline employees who are African-Americans who do not wish to handle police orders?



# QUESTIONS



# Contact and COVID19 Resources

Wilson Elser:

[https://www.wilsonelser.com/coronavirus\\_resource\\_center\\_home](https://www.wilsonelser.com/coronavirus_resource_center_home)

California Restaurant Association:

<https://www.calrest.org/coronavirus-resources>

Panelists:

Steven Joffe

Partner – Los Angeles

213.330.8970

[steven.joffe@wilsonelser.com](mailto:steven.joffe@wilsonelser.com)

Bruno Katz

Partner – San Diego

619.881.3317

[bruno.katz@wilsonelser.com](mailto:bruno.katz@wilsonelser.com)

CRA Helpline

800.765.4842 ext. 2743

[helpline@calrest.org](mailto:helpline@calrest.org)







# Visit Our Coronavirus Resource Center

