

SPECIAL ALERT: UNDERSTANDING THE NEW CALIFORNIA COVID-19 EMERGENCY WORKPLACE STANDARDS

California's Division of Occupational Safety and Health (Cal/OSHA) recently approved new [COVID-19 Emergency Standards](#), which went into effect on November 30, 2020, and are required to be implemented by almost all employers in California.

Although some of the standards mirror preexisting public health regulations, they also set forth numerous new obligations for employers (including a new paid time off requirement, detailed further below). Further, as these standards have the weight of legal enforceability behind them, including the potential for civil penalties, employers must promptly ensure their compliance.

Notably, although Cal/OSHA's new standards apply to "all employees and places of employment" in California, there are several narrow exceptions to keep in mind. The regulations do *not* apply to: (1) workplaces with only one employee who has no contact with others; (2) employees working from home; and (3) employees when covered by California Code of Regulations, Title 8, section 5199 (<https://www.dir.ca.gov/title8/5199.html>).

This Special Alert will provide you with key takeaways related to these new standards.

Written COVID-19 Prevention Program

First, Cal/OSHA's new regulations require employers to implement an effective written COVID-19 Prevention Program (CPP), which may be either integrated into an existing Injury and Illness Prevention Program or maintained as a separate document. Employers are required to maintain records of their steps to implement the written CPP, and to make the CPP available at the workplace to employees, authorized employee representatives and the Division immediately upon request.

The CPP must cover the following categories of information:

1. A system for communicating with employees;
2. Identification and evaluation of COVID-19 hazards;
3. Investigating and responding to COVID-19 cases in the workplace;
4. Correction of COVID-19 hazards;
5. Training and instruction;
6. Physical distancing;
7. Face coverings;
8. Other engineering controls, administrative controls and personal protective equipment;
9. Reporting, recordkeeping and access;
10. Exclusion of COVID-19 cases; and
11. Return to work criteria.

The regulations detail specific requirements related to each of these 11 topics which should be considered when establishing your CPP. Some of the more notable requirements are discussed in further detail below.

Evaluating and Correcting Potential COVID-19 Hazards

The standards require employers to identify and evaluate any COVID-19 hazards that may exist in the workplace and implement effective policies and/or procedures to correct them “in a timely manner based on the severity of the hazard.” As part of this process, employers are required to do the following:

- Develop and implement a COVID-19 symptom screening process for employees. Although employers may choose to have employees self-screen for symptoms before reporting to work, if they instead choose to screen employees at the workplace, they must ensure that face coverings are used by both screeners and employees, and that only non-contact thermometers are used (in the event a thermometer is used).
- Identify all interactions, areas, activities, processes, equipment and materials that could expose employees to COVID-19 hazards. This includes all places where people may congregate such as entrances, bathrooms, hallways, elevators, break and eating areas. It also includes an analysis of exposure to all those who may enter the workplace, such as customers or clients.
- Evaluate, for indoor locations, how to maximize quantity of outdoor air and whether it is possible to increase filtration efficiency of the existing ventilation system.

Preventative Methods (including PPE)

The standards also set forth numerous instructions related to preventing the spread of COVID-19 in the workplace. Although most employers will have already implemented many of these requirements, it is worth reviewing the following preventative measures to ensure compliance with the new regulations:

- **Physical distancing** – Employees are required to maintain at least six feet of physical distance, except where an employer can demonstrate it is not possible, and except for momentary exposure while in movement. Suggestions to maintain physical distance include telework, visual cues such as signs and floor markings in the workplace, and staggered work times. When it is not possible to maintain six feet of physical distance, individuals shall be as far apart as possible. Further, where it is not possible to maintain physical distancing at fixed workstations, the employer shall install cleanable solid partitions.
- **Face coverings** – Employees must wear face coverings while indoors, while less than six feet apart outdoors, and where otherwise required by orders from CDPH or local health authorities. Employers are to *provide face coverings* and ensure compliance by employees. Face coverings must be clean and undamaged, and worn over the mouth and nose. Employers must not prevent any employee from wearing a face covering unless it would create a safety hazard. Further, employers must implement measures to communicate their face covering requirement to non-employees on the premises.

- There are five exceptions to the face covering requirement, listed below. The exceptions are as follows:
 - When an employee is alone in a room.
 - While eating and drinking, so long as employees are six feet apart.
 - Employees wearing respiratory protection.
 - Employees who cannot wear face coverings due to medical or mental health conditions or disabilities, or who are hearing impaired or communicating with a hearing-impaired person. Any such employees must wear an effective non-restrictive alternative such as a face shield with a drape at the bottom.
 - Specific tasks which cannot feasibly be performed with a face covering.
Notably, any employee not wearing a face covering must maintain a six-foot distance from others unless he or she is tested for COVID-19 at least twice weekly.
- **Ventilation** – Where buildings have mechanical or natural ventilation, employers must maximize the quantity of outdoor air to the extent possible, except where the EPA Air Quality Index is greater than 100, or where letting in outdoor air would create excessive heat or cold (or any other hazard to employees).
- **Cleaning and disinfecting** – Employers must implement cleaning and disinfecting procedures for frequently touched surfaces (doorknobs, handrails, bathrooms, etc.). These procedures must not create a hazard to employees.
- **Handwashing** – Employers are to evaluate their handwashing facilities and determine if there is a need for additional facilities, allow time for handwashing and encourage employees to wash their hands for at least 20 seconds at a time. Employers must also provide employees with effective hand sanitizer (not containing methyl alcohol).
- **Personal Protective Equipment (PPE)** – Employers must determine whether PPE such as gloves, goggles, and face shields are needed to prevent exposure to COVID-19 in the workplace. Additionally, employers must evaluate whether respiratory protection is needed when physical distancing is not feasible. If any PPE is needed, *the employer must provide such equipment.*

In addition to implementing these protective measures, the new regulations require employers to provide effective training and instructions to employees regarding physical distancing, face coverings, and the importance of frequent handwashing. Employers must also provide training regarding the ways that COVID-19 spreads and COVID-19 symptoms. Finally, employers must instruct employees about the importance of not coming to work and obtaining a COVID-19 test if they have any symptoms, and the COVID-19-related benefits available to them.

Responding to COVID-19 Cases in the Workplace

The new standards define a “COVID-19 case” as a person who: (1) has had a positive COVID-19 test; (2) is subject to a COVID-related order to isolate; or (3) has died due to COVID-19. In the event there is a COVID-19 case in the workplace, the employer must take the following actions:

- Determine the date and time the COVID-19 case was last present in the workplace and, to the extent possible, determine the date of onset of COVID-19 symptoms (if any). Then, determine who may have been exposed to the COVID-19 case.
 - “COVID-19 exposure” is defined as being within six feet of a COVID-19 case for a cumulative total of 15 minutes or greater in any 24-hour period within the high-risk exposure period, regardless of the use of face coverings. The “high-risk exposure period” is fully defined in the regulations, but essentially lasts from two days before, and until 10 days after, the onset of symptoms or a positive COVID-19 test.
- Give notice of the COVID-19 case, in a manner that does not reveal any personal identifying information, to the following **within one business day**:
 - All employees who may have had COVID-19 exposure and their authorized representatives.
 - Independent contractors and other employers present at the workplace during the high-risk exposure period.
- Offer COVID-19 testing *during work hours, and at no cost*, to employees who had potential COVID-19 exposure in the workplace.
- Exclude the COVID-19 case from the workplace until he or she is permitted to return to work.
 - Per the regulations, a COVID-19 case shall be permitted to return to work when:
 - If the person had COVID-19 symptoms:
 - At least 24 hours after a fever of 100.4 or higher has resolved without the use of fever-reducing medication;
 - COVID-19 symptoms have improved; and
 - At least 10 days have passed since COVID-19 symptoms first appeared.
 - If the person did *not* have COVID-19 symptoms (but tested positive):
 - A minimum of 10 days has passed since the date of specimen collection of his or her first positive COVID-19 test.
 - Notably, employers shall not require a negative COVID-19 test for an employee to return to work under the new standards.
- Exclude employees with COVID-19 exposure from the workplace for 14 days after the last known exposure to a COVID-19 case.
 - However, employers need not exclude impacted employees from the workplace if they are temporarily reassigned to work where they do not have contact with other persons (so long as they have not been isolated by a local health department).
- Perhaps most importantly, **continue and maintain the employee’s earnings, seniority and benefits** where the excluded employee would otherwise be able to work. Employers must provide employees with information on available benefits at the time of exclusion.
 - The following two exceptions apply to this paid time off requirement:
 - It does not apply to any period of time for which the employee is unable to work for reasons other than protection from possible COVID-19 transmission.

- It does not apply where the employer demonstrates that the employee’s COVID-19 exposure is not work related.
- Investigate whether any workplace conditions could have contributed to the risk of COVID-19 exposure and how to reduce COVID-19 hazards.

Reporting and Recording COVID-19 Cases

The new standards require that employers report information about COVID-19 cases in the workplace to the local health department when required by law. Further, employers are required to immediately report an COVID-19-related serious illnesses or death of an employee “occurring in a place of employment or in connection with any employment.”

Employers are also required to keep a record of and track all COVID-19 cases with the employee’s name, contact information, occupation, work location, last day at the workplace, and date of positive COVID-19 test. They are to keep employees’ medical information confidential. Further, they shall make this information (with personal identifying information removed) available to employees and authorized representatives upon request.

COVID-19 Outbreaks

The new regulations also contain standards related to COVID-19 outbreaks in the workplace, differentiating between the categories of “Multiple COVID-19 Infections and COVID-19 Outbreaks” and “Major COVID-19 Outbreaks.”

Multiple COVID-19 Infections and COVID-19 Outbreaks

The first category refers to instances where either the local health department has identified the workplace as a location of a COVID-19 outbreak, or there are three or more COVID-19 cases in a workplace within a 14-day period. In this case, employers are required to take the following actions:

- Provide COVID-19 testing to *all employees* in the exposed workplace except those who were not present during the period of the outbreak or the relevant 14-day period. Employers must provide this testing *at no cost to employees during work hours*. The employees must then be tested again one week later. Following the second test, employers must provide continuous testing of employees who remain at the workplace once per week (or more frequently if recommended by the local health department). This must continue until there are no new COVID-19 cases detected in the workplace for a 14-day period. Notably, negative tests will not impact the duration of the quarantine period.
- Exclude any COVID-19 cases and employees with COVID-19 exposure from the workplace in the same manner described above (see section on “Responding to COVID-19 Cases in the Workplace”).
- Investigate possible workplace-related factors that may have contributed to the outbreak, and implement changes as needed. This specifically includes a review of the employer’s leave policies and practices and “whether employees are discouraged from remaining home when sick,” among

other factors. This investigation process must be updated every 30 days that the outbreak continues.

- Notify the local health department immediately but *no longer than 48 hours* after the employer knows, or with diligent inquiry would have known, of three or more COVID-19 cases. Employers must ask for guidance on preventing further spread of COVID-19 in the workplace, and provide the health department with information related to the cases, including but not limited to the number of cases, the name, contact information, and hospitalization and/or fatality status. Employers must also continue to give notice to the local health department of any subsequent cases at the workplace.

Major COVID-19 Outbreaks

If there is a major COVID-19 outbreak, defined as 20 or more cases in an exposed workplace within a 30-day period, employers are required to take the following actions:

- Provide twice a week COVID-19 testing to *all employees* who were in the exposed workplace during the relevant 30-day period. Employers must provide this testing *at no cost to employees during work hours*. This must continue until there are no new COVID-19 cases detected in the workplace for a 14-day period.
- Exclude any COVID-19 cases and employees with COVID-19 exposure from the workplace in the same manner described above (see section on “Responding to COVID-19 Cases in the Workplace”).
- Investigate possible workplace related factors that may have contributed to the outbreak, and implement changes as needed. The regulations also set forth specific hazard correction measures employers must take in the event of a major outbreak, including evaluating their ventilation system, whether there is a need for a respiratory protection program, and the potential of halting some or all operations.
- Notify the local health department in the same manner required for non-major outbreaks (described above).

Employer-Provided Housing and Transportation Regulations

The new standards also set forth instructions to employers who provide housing and/or transportation for their employees. Notably, there are several exceptions to these regulations for government employers and emergency response operations.

Employers covered by this regulation who provide housing for employees must make housing arrangements with the following prioritizations in mind: (1) first, house employees who would have the same household outside of work (i.e. family members) together; (2) next, house employees from the same crew or worksite together; and (3) lastly, house others together only when no other housing options are available. Employers must also ensure appropriate physical distancing is permitted inside the housing, including by spacing beds at least six feet apart. Employers must also provide face coverings to residents, and ensure the housing is cleaned and disinfected at least once a day. Further, employers

must ensure that COVID-19 cases are isolated from all other occupants by providing them with private sleeping areas, bathrooms, and cooking and eating facilities.

Employers who provide transportation for employees must also prioritize transportation assignments as follows: (1) first, those who reside together should ride together; (2) next, those who work on the same crew or at the same worksite; and (3) lastly, all others may ride together when no other alternative is available. Employers must ensure passengers and the driver are all separated from one another by at least three feet in the vehicle. They also must ensure that employees and drivers are screened for COVID-19 symptoms prior to boarding shared transportation. Finally, they must follow comply with several sanitation and ventilation guidelines for the vehicles.

Conclusion

Cal/OSHA's new emergency COVID-19 safety orders place an immediate obligation on employers to establish significant policies and procedures attempting to curb the spread of COVID-19 in the workplace. These regulations are currently in effect for at least 180 days, at which time they may be extended. Accordingly, employers would be wise to take prompt action to review their existing COVID-19 policies and update them where necessary.

Do you have questions about how this update may affect you? For further information contact:

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