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Cal/OSHA Adopts New COVID-19 Rules to Take Effect Immediately

On June 17, 2021, the Occupational Safety & Health Standards Board of California's Division of Occupational Safety and Health ("Cal/OSHA") voted to adopt revisions to the COVID-19 Emergency Temporary Standard ("ETS"). Governor Gavin Newsom issued an executive order making the revised ETS effective immediately. The regulations, which govern workplace safety, align with California's mask and social distancing guidance for the general public.

Social Distancing Requirements Eliminated

The ETS largely removes physical distancing protocols. Social distancing, however, remains required when: unvaccinated employees are eating or drinking; a COVID-19 outbreak occurs; or an unvaccinated employee is unable to wear a face covering or a less restrictive alternative due to a medical condition or disability.

Mask Requirements Relaxed

Fully vaccinated employees no longer need to wear face coverings indoors, except for the places where California still requires everyone to wear a mask, or during a COVID-19 outbreak.

Unvaccinated employees must continue to wear face coverings, subject to these exceptions:

- When an employee is alone in a room or vehicle;
- While eating or drinking at the workplace, as long as employees are at least six feet apart and the outside air supply to the area has been maximized to the extent feasible;
- When an employee is wearing a respirator instead of a face covering;
- When the employee cannot wear a face covering due to a medical or mental health condition or disability, or when the employee is hearing impaired or communicating with a hearing-impaired person; or

- When the employee is performing specific tasks that cannot be performed while wearing a face covering.

If a workplace suffers a COVID-19 outbreak, all employees must resume wearing masks and maintaining social distance, regardless of vaccination status.

New Definition of “Face Covering”

The ETS defines “face covering” as a surgical mask, a medical procedure mask, a respirator worn voluntarily, or a tightly woven fabric or non-woven material of at least two layers. The following items are not “face coverings”: scarf, ski mask, balaclava, bandana, turtleneck, collar, or single layer of fabric.

Respirator Requirements

An employer must make respirators available for voluntary use to employees who are not fully vaccinated and who work indoors or in a vehicle with more than one person. The employer must provide the respirator at no cost to the employee. Employees must also be able to request a respirator without fear of retaliation.

COVID-19 training must include information about respirators, including the employer’s policies for providing respirators, the right of employees who are not fully vaccinated to request a respirator for voluntary use, how to properly wear a respirator, and how to perform a seal check of a respirator.

Changes to Notice Requirements

The ETS mandates California employers to provide notice within one business day of the time the employer is informed (or should know) of a COVID-19 case. The employer must provide notice in writing, in a form readily understandable to employees, that people at the worksite may have been exposed to COVID-19. Acceptable notice may include personal service, email, or text message, as long as the employer can reasonably anticipate the employee will receive the notice within one business day of sending. The employer must send the foregoing notice to all employees at the worksite during the high-risk exposure period, to independent contractors and other employers at the worksite during the high-risk exposure period, and to any authorized representative.

Exclusion of Exposed Employees

Employers no longer need to exclude (prevent from working on site) an employee who had close contact with a COVID-19 case if the employee is fully vaccinated and does not develop symptoms.

Return to Work Rules for Close Contacts

According to the updated rules, an employee who had a close contact but experiences no symptoms may return 10 days after the date of the last known close contact. If an employee had a close contact but developed symptoms, then the

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employee may return when: (1) the employee tests negative for COVID-19; (2) at least 10 days have passed since the last known close contact; and (3) the employee has been symptom-free for at least 24 hours without using fever-reducing medication.

Different rules apply for healthcare workers, emergency responders, and social service workers. During critical staffing shortages, such employees may return after day seven from the date of last exposure, provided the employees test negative based on a specimen collected after day five and the employees do not develop symptoms.

Vaccination Documentation

An employer must obtain and document employees' vaccination status, and documentation must be maintained confidentially. Employers have three options for maintaining documentation of employee vaccination status: (1) employees can self-attest their own vaccination status and their employer can maintain a record of the self-attestation; (2) employees can provide proof of vaccination (vaccine card, image of vaccine card, or health care document showing vaccination status) and their employer can keep a record of each employee's vaccination status; or (3) employees can provide proof of vaccination (vaccine card, image of vaccine card, or health care document showing proof of vaccination) and their employer can keep a copy of the document showing proof of vaccination. Employees who decline to provide their vaccination documentation must be treated as being unvaccinated.

Testing

An employer in California must offer testing at no cost (and as paid work time) for:

- Symptomatic unvaccinated employees, regardless of whether there is a known exposure;
- Unvaccinated employees after an exposure;
- Unvaccinated employees during an outbreak;
- Vaccinated employees after an exposure if they develop symptoms; and
- All employees during a major outbreak.

To read the text of the ETS and the Executive Order:

Governor Newsom's Executive Order:

<https://www.gov.ca.gov/2021/06/17/governor-newsom-signs-executive-order-expediting-cal-oshas-revised-covid-19-regulations-to-ensure-consistency-with-public-health-guidance/>

ETS: <https://www.dir.ca.gov/OSHSB/documents/Jun172021-COVID-19-Prevention-Emergency-txtbrdconsider-Readoption.pdf>

FAQs: <https://www.dir.ca.gov/dosh/coronavirus/Revisions-FAQ.html>

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