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Employment Update: Proposed New COVID CAL/OSHA Rules

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Cal/OSHA has finally proposed new COVID-19 Emergency Temporary Standards (ETS) which will be considered at its May 20, 2021 meeting. The rules may change after the meeting, so we will provide a detailed look at the final rules once adopted. Meanwhile, below is a summary of the *proposed* changes, so that you can start preparing.

Important proposed changes:

- Exception to “close contact” when employee wears a respirator (includes N95 mask) (3205(b)(1))
- Limits definition of “exposed” area for contact tracing and “close contact” purposes (3205(b)(7):
 - Excludes places where people momentarily pass through while everyone wears face covering
 - Excludes areas where COVID case worked for less than 15 mins and all people were wearing masks
- Exemption from mandatory testing after close contact with a COVID case in the workplace for:
 - “Fully vaccinated” people (14 days or more after receiving final vaccine shot) who do not develop COVID symptoms; and
 - People who recovered from COVID, returned to work and are symptom free for 90 days after they recovered
- Physical distancing of 6 feet mandatory until July 31, with new exceptions for:
 - If wearing respirator/N95
 - Locations where all employees are fully vaccinated or are exempted from vaccination due to reasonable accommodation or exception under law (exempted employees must be provided respirators for voluntary use and must be tested for COVID at least once per week at no cost to employee)
- Face covering requirements still in place with new exception for when all persons indoors in a room are fully vaccinated and do not have COVID symptoms, or when employees are outside, fully vaccinated and have no symptoms
 - “Face covering” specifically excludes “a scarf, ski mask, balaclava, bandana, turtleneck, collar, or single layer of fabric”
- Starting July 31, employers must provide respirators (N95) for voluntary use to all employees working indoors who are not fully vaccinated
- Fully vaccinated employees without symptoms and those that recovered from COVID (and remained free of COVID symptoms for 90 days) do not need to be excluded from the workplace (and paid) after close contact with a COVID case
- Return to work criteria for non-vaccinated employees that have close contact with COVID case and develop symptoms changed to require negative test before returning to work
- If outbreak of 3 or more cases, must filter recirculated air with MERV 13 or higher efficiency filter or highest compatible filter possible

The proposed changes from the current ETS are shown in strikethrough and underline here:

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

As always, please reach out to us with any specific questions for your workplace.