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Employment Update: Cal/OSHA COVID-19 Rules Still Uncertain (But maybe June 15)
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Yesterday the Cal/OSHA Standards Board initially rejected and then narrowly approved the revised Cal/OSHA COVID-19 Prevention Emergency Temporary Standards. The new Cal/OSHA standards are expected to go into effect no later than June 15, however, the Board indicated they may further change the regulations in the coming weeks to take into account changes in circumstances. The Office of Administrative Law has 10 calendar days to review and approve the new standards, which will not become effective until then. We will keep you posted.

Many business groups harshly criticized the new rules at the meeting yesterday, particularly the continued mask and distancing mandates. The Board made clear that the regulations are temporary and that they will consider easing the rules and restrictions in the coming weeks or months.

The new rules expected to go into effect include the following notable changes to the current regulations:

Important proposed changes:

- Limits definition of “exposed” area for contact tracing and “close contact” purposes:
 - Excludes places where people momentarily pass through and everyone wears face covering
 - Excludes areas where COVID case worked for less than 15 mins and all people wore face covering
- 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
- 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”
 - If an employee cannot wear a mask due to medical condition or disability, the employee should wear an effective non-restrictive alternative such as a face shield with a drape at the bottom if their condition permits
 - If not all persons are vaccinated and an employee cannot wear face covering or an alternative due to a medical condition, a disability, or when a task cannot be performed with a face covering, the employee must maintain at least 6 feet distance unless the unmasked employee is either fully vaccinated or tested at least weekly for COVID
- Physical distancing of 6 feet mandatory until July 31, with exception for when employees are wearing a respirator/N95
 - NOTE: Cal/OSHA *removed* the proposed exception for locations where all employees are fully vaccinated or are exempted from vaccination. This means physical distancing in the workplace will still be required even at worksites where everyone is fully vaccinated until July 31.
 - Requirement until July 31 to maintain cleanable partitions at work stations such as cash registers or production line stations where physical distancing cannot be maintained at all times and employees aren’t wearing respirators/N95 masks

- Employers must provide respirators (N95) for voluntary use to all employees working indoors who are not fully vaccinated, and encourage their use (starting 15 days after regulations adopted, or July 15, whichever comes first)
- Changes to exclusions after close contact with a COVID case:
 - 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
 - Exception to “close contact” when employee wears a respirator (includes N95 mask) during time they were near the COVID person
 - 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
- New requirements for employees working at “outdoor mega events” (with 10,000 or more people) are essentially the same as for employees working indoors

Remember that your local health department may have stricter COVID-19 guidelines, in which case you should follow the strictest rule. Napa and Sonoma are described below. If you are in a different county, please consult our local health department.

- Napa County’s current face covering mandate requires use of face coverings in workplaces and office spaces when 6 feet of distance cannot be accomplished. (See <https://www.countyofnapa.org/DocumentCenter/View/17329/Napa-County-Health-Officer-Recommendations-For-Wearing-Face-Coverings?bidId> .) Right now, Cal/OSHA is stricter than Napa County and requires face coverings at all times except if exempted due to a disability, or if a person is alone in a room – so you must follow Cal/OSHA, not Napa County’s mandate. If the Cal/OSHA proposed ETS is adopted and fully vaccinated workplaces become mask-free, then Napa’s guidance would be stricter than Cal/OSHA (but we would expect the County guidance to change to match the ETS guidelines).
- Sonoma County’s recent change to their face covering order was rescinded and the County is requiring compliance with Cal/OSHA ETS in the workplace. (See <https://socoemergency.org/face-covering-order> .)

The Department of Industrial Relations press release regarding yesterday’s decision is available here: <https://www.dir.ca.gov/DIRNews/2021/2021-58.html>