

This post is for general informational purposes only and should not be considered to constitute legal advice.

Employment Update: NEW Cal/OSHA Emergency Standards for COVID-19 Prevention
Posted December 2, 2020

On November 30, the Office of Administrative Law reviewed and approved the Emergency Standards for COVID-19 Prevention proposed by the California Occupational Safety and Health Standards Board (Cal/OSHA). The new rule goes beyond Cal/OSHA's guidance issued to date, and employers must comply immediately. This update is provided for informational purposes only. If you need specific legal guidance, please contact us to discuss.

Cal/OSHA has indicated it plans to take enforcement action based on the new standards. As a result, employers need to critically review any existing COVID-19 policies and procedures and bring them in line with these new regulations.

Which employers must comply?

The emergency rule applies to all California employers and employees **except**:

- workplaces with one employee who does not have contact with others;
- employees that are working from home; and
- employees subject to Cal/OSHA's Aerosol Transmissible Diseases standard (such as healthcare facilities, nursing homes, paramedics and emergency responders).

Written COVID-19 Prevention Program

Covered employers must maintain a written COVID-19 Prevention Program, which can be integrated into the employer's IIPP or maintained in a separate document. The requirements of a written COVID-19 Prevention Program are extensive and will need to be tailored to each employer's circumstances.

An employer's COVID-19 Prevention Program must include the following categories of information summarized below. Employers should review the regulations for more details and reach out to legal counsel with any individual concerns.

1. System for Communicating

OSHA requires employers to communicate with employees about certain topics, including asking employees to report any symptoms, exposures or hazards in the workplace, providing information about access to testing and COVID-19 hazards, policies and procedures.

2. Identification of COVID-19 Hazards

Employers have an obligation to identify, evaluate and respond to hazards. The Prevention Program must include:

- A process for screening employees for COVID-19 symptoms (which can include self-screening at home prior to reporting to work)
- Policies and procedures to respond to COVID-19 cases, taking into account a workplace-specific evaluation of potential COVID-19 hazards

- Strategy for maximizing quantity of outdoor air when possible and increasing filtration efficiency

3. Investigating and Responding to COVID-19 Cases

Employers must have an effective procedure to investigate COVID-19 cases in the workplace, including a procedure for verifying cases, collecting information and contact tracing to determine potential exposure to others.

An employer must give notice of potential COVID-19 exposure within one business day to any employees, contractors or other employers who may have been exposed without revealing personal identifying information. (This is the same requirement as AB-685.)

Cal/OSHA requires that employers offer COVID-19 testing, at no cost to employees during their working hours, if they have had a potential exposure in the workplace, and inform them of any benefits they may be entitled to (such as workers' compensation and protected leave laws).

4. Correction of Hazards

Employers must implement effective policies and/or procedures for correcting unsafe or unhealthy conditions, work practices, policies and procedures in a timely manner based on the severity of the hazard.

5. Training

Employers must provide training and instruction on the employer's policies and procedures, how COVID spreads and how to minimize the spread using various methods.

6. Physical Distancing

The standard requires that employees must be separated by at least six feet, unless the employer can demonstrate that such separation is not possible, in which case employees should be as far apart as possible.

7. Face Coverings

Employers must provide face coverings and ensure they are properly worn by employees (over the nose and mouth when indoors, or outdoors and less than six feet away) with limited exceptions.

8. Other Controls and PPE

Based on the employer's workplace environment, the employer must put controls and procedures in place to minimize transmission, such as disinfection and cleaning protocols, handwashing stations, erection of barriers and usage of PPE.

9. Reporting and recordkeeping

Employers must follow certain recordkeeping and reporting requirements, including reporting any COVID-19 case that results in the hospitalization or death of any employee to Cal/OSHA, and documenting steps taken to implement the COVID-19 Prevention Program and comply with Cal/OSHA regulations.

Employers must record and track all COVID-19 cases with the employee's name, contact information, occupation, location where the employee worked, the date of the last day at the

workplace and the date of a positive COVID-19 test, and this information shall be made available to employees with personal identifying information removed.

10. Exclusion of Cases

Employers must take steps to ensure COVID-19 cases are excluded from the workplace until return to work criteria is met.

Importantly, the regulation specifies that excluded employees must continue to receive earnings, seniority and other rights and benefits of employment as if they had not been removed from their job, with some exceptions.

11. Return to Work criteria

Generally, employees with symptoms cannot return to work until:

- At least 24 hours have passed since a fever of 100.4 or higher has resolved without the use of fever-reducing medications;
- COVID-19 symptoms have improved; and
- At least 10 days have passed since COVID-19 symptoms first appeared.

Employees without symptoms who test positive cannot return to work until a minimum of 10 days have passed since the date of specimen collection of their first positive COVID-19 test.

A negative COVID-19 test shall not be required for an employee to return to work. This has been interpreted by most in the community to mean that employers cannot require a negative test in order to return to work.

There is different return to work criteria when an employee is subject to an isolation or quarantine order, or when an employee's removal would create an undue risk to community health or safety.

Response to Multiple Infections & Outbreaks

The Cal/OSHA regulations provide requirements in the event a workplace suffers from multiple COVID-19 infections or an "outbreak."

An "outbreak" occurs (under the Cal/OSHA regulations and according to the California Department of Public Health) if there are three or more COVID-19 cases within a 14-day period, or if a local health department identifies a workplace as an outbreak location. In the event of an "outbreak," the employer must:

- Provide immediate no-cost testing to all employees at the exposed workplace who were present during the period of outbreak, and then another test one week later. Then, employers must provide continuous testing of employees who remain at the workplace at least once per week, until no new COVID cases are detected in the workplace for a 14-day period;
- Exclude any cases and exposed employees from the workplace;
- Investigate and determine possible workplace factors, implement any changes necessary, and document any steps taken;
- Notify the local health department within 48 hours after the employer discovers an outbreak. (This is the same timeframe as required by AB-685. Note that AB-685, and the regulation described

above *also* requires employers notify any employees within one business day that they may have been exposed if they were on the worksite during the infectious period.)

Response to Major Outbreaks

The Cal/OSHA regulations provide requirements in the event a workplace suffers from a “major outbreak” which occurs when there are 20 or more COVID-19 cases in a 30-day period. In such instances, employers must provide testing at least twice weekly until there are no new cases detected in a 14-day period. In the event of a major outbreak, in addition to taking all the same steps for an “outbreak,” an employer must conduct a thorough investigation and take preventative steps such as installing high efficiency air filters and evaluating whether to halt some or all operations temporarily.

Requirements for Employer-Provided Housing & Transportation

The new Cal/OSHA regulations provide specific requirements for employers that have employer-provided housing and transportation, including prioritizing assignment of housing and transportation, cleaning and disinfection protocols, hand hygiene, physical distancing and the use of face coverings.

For more details, a full copy of the approved Cal/OSHA regulations can be found here:
<https://www.dir.ca.gov/OSHSB/documents/COVID-19-Prevention-Emergency-apprvdtxt.pdf>