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### **Employment Update: Mandatory Vaccination Ruling and Cal/OSHA Return to Work Chart**

The U.S. Supreme Court ruled today that the DOL's mandatory vaccination rule is not enforceable. As a result, employers with 100 or more employees will not be required to implement a mandatory policy pursuant to the federal OSHA regulation. There is still a possibility that Cal/OSHA will issue its own version of a mandatory vaccination policy. We will keep you posted as more information develops.

Attached is a helpful chart concerning the Cal/OSHA and CDPH return to work criteria with respect to COVID-19, along with exclusion pay information and helpful definitions. We are still waiting for the full guidance from Cal/OSHA about the implementation of their new rules tomorrow. As more information develops we will communicate it to you. Meanwhile, we encourage you to consult the Cal/OSHA FAQ page for detailed information on specific issues and to contact us if you need legal guidance.

Cal/OSHA's FAQ page can be found here: <https://www.dir.ca.gov/dosh/coronavirus/covid19faqs.html>

## Cal/OSHA Return to Work and Exclusion Pay Requirements

<p><b>Test Positive For COVID-19</b> <i>(regardless of vaccination status, previous infection, symptoms)</i></p>	<p>Must be excluded from the workplace for at least 5 days</p> <p>If employee has <u>no symptoms</u> or their symptoms are resolving:</p> <ul style="list-style-type: none"> <li>• They can return to work after 5 days if they get a negative test (must be collected on day 5 or later)</li> <li>• If they are unable to get tested or choose not to, they can return to work after 10 days</li> </ul> <p>If employee <u>has symptoms (other than a fever)</u> that are not resolving, they cannot return to work until symptoms are resolving or until 10 days from their positive test</p> <p>If employee <u>has a fever</u>, they cannot return to work until fever resolves</p> <p>Must wear face coverings around others for a total of 10 days after the positive test</p>
<p><b>Unvaccinated and Exposed to COVID-19</b></p>	<p>Must be excluded from the workplace for at least 5 days after last close contact with COVID case and must test on day 5</p> <p>If employee is asymptomatic:</p> <ul style="list-style-type: none"> <li>• Can return to work after 5 days if they get a negative test (must be collected on day 5 or later)</li> <li>• If unable to get tested or choose not to, they can return to work after 10 days</li> </ul> <p>If an exposed employee tests positive, follow the requirements for positive cases</p> <p>If an exposed employee develops symptoms, they must continue to be excluded from work until they get a negative test result</p> <p>Employees must wear face coverings around others for a total of 10 days after exposure</p>
<p><b>Booster eligible but not Boosted and Exposed to COVID-19</b></p>	<p>If employee is <u>asymptomatic</u>, no need to quarantine if:</p> <ul style="list-style-type: none"> <li>• Tested within 3-5 days of last exposure, and receive negative test</li> <li>• Wear well-fitting mask around others for 10 days</li> <li>• No symptoms develop</li> </ul> <p>If symptoms develop, follow requirements for unvaccinated employees</p>

	If an exposed employee tests positive, follow the requirements for positive cases
<b>Vaccinated and Boosted, or Vaccinated and Not Yet Eligible for Booster and Exposed to COVID-19</b>	<p>Do <u>not</u> need to quarantine if employee does all of the following:</p> <ul style="list-style-type: none"> <li>• Test on day 5 and receive a negative result</li> <li>• Wear face coverings around others for a total of 10 days after exposure</li> </ul> <p>If an employee tests positive they must follow the return to work criteria for positive cases</p> <p>If employees develop symptoms, they must be excluded from the workplace until they get a negative test result</p>

### Exclusion Pay Requirement:

Employers must provide exclusion pay *only* to employees who are excluded from work because of a **workplace** COVID-19 exposure if:

- 1) the employee is not assigned or able to work remotely during that time; and
- 2) the employee is not receiving Disability Payments or Workers' Compensation Temporary Disability Payments during the exclusion period.

Non workplace exposure does not need to be compensated, but employer can choose to do so.

Exclusion pay must be at employee's **regular rate** of pay. See DIR's FAQ for Overtime for detail explanation on regular rate of pay and how to calculate. [https://www.dir.ca.gov/dlse/faq\\_overtime.htm](https://www.dir.ca.gov/dlse/faq_overtime.htm)

### Definitions:

**Fever:** Measured body temperature of 100.4 degrees Fahrenheit or higher

**Close contact / Exposure:** Occurs when employee is within 6 feet for cumulative total of 15 minutes or more in a 24-hour period during contagious period (2 days before symptoms or positive test until 10 days after and symptoms improved)

**Booster Eligible:** As of date of drafting this chart, 5 months after completing two dose series (Pfizer/Moderna) and 2 months after receiving one dose series (J&J/Janssen). See <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/booster-shot.html> for up-to-date information.

**COVID-19 Test:** USFDA approved to detect SARS-CoV-2 virus, administered according to authorized instructions, and not both self-administered and self-read unless observed by the employer or an authorized telehealth proctor. Examples: specimens that are processed by a laboratory, proctored over-the-counter tests, point of care tests, and tests where specimen collection and processing is either done or observed by the employer.

### Disclaimer:

There is still uncertainty surrounding some of the rules, which we hope will be clarified by Cal/OSHA soon. Please continue to monitor the Cal/OSHA FAQ page at <https://www.dir.ca.gov/dosh/coronavirus/COVID19FAQs.html> and contact us if you are unable to find answers to your questions.

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