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## **Employment Update: Revised ETS COVID Regulations Effective May 6, 2022**

Cal/OSHA Standards Board last week voted to adopt the new version of the ETS. The new version of the ETS will replace the current version on **May 6, 2022 and will remain in effect until December 31, 2022** (unless modified by an order from the Governor). We expect that the DIR will post the text of the new ETS and updated FAQs on their website on or before May 6, but until then here is a summary of the changes as compared to the current ETS:

- **Vaccination Status No Longer a Factor:** The definition of “fully vaccinated” has been removed from the new ETS, which means vaccination status is no longer a factor and all employees will have the same guidelines regardless of vaccination status.
- **Face Coverings:** Employers will only need to provide face coverings and ensure they are worn by employees when required to do so by orders from the California Department of Public Health (“CDPH”) or applicable local public health order. The new ETS also removes the “light test” for determining if a mask can be used (i.e. fabrics that do not let light pass through when held up to a light source).
- **Testing:** To meet the return-to-work requirements, a COVID-19 test may now be both self-administered and self-read, but only if another means of independent verification of the results can be provided such as a time-stamped photograph of the test results.
- **Close Contacts:** The new ETS no longer requires exclusion of close contacts from the workplace. Instead, employers must review and follow CDPH guidance for persons who had close contacts, including guidance regarding quarantine or other measures to reduce transmission.
  - Currently, the CDPH’s quarantine guidance instructs asymptomatic individuals who are not fully vaccinated and boosted to stay home for five days. As such, the CDPH’s current guidance, which the new ETS requires employers to follow, would still require exclusion (and knowledge of an employee’s vaccination status) even if the ETS itself doesn’t specify this.
- **Return to Work Criteria:** The new ETS contains updated return to work criteria that are more in line with the current CDPH requirements.
- **“Returned Case”:** The new ETS creates a new category of employees who returned to work after testing positive for COVID-19 and do not develop symptoms after their return. An employee is only a returned case for 90 days after they first tested positive for COVID-19. Employers are not required to make COVID-19 testing available to returned cases.
- **Removes Cleaning and Disinfecting Procedures:** Employers are no longer required to clean and disinfect frequently touched surfaces or areas and equipment used by COVID-19 cases during their infectious period. These requirements were also removed for employer provided housing and transportation.
- **CPP Still Required:** All employers must continue to have a COVID Prevention Plan (“CPP”) in place until the ETS is no longer in effect.
- **Exclusion Pay Still Required:** For employees who are required to be excluded from the workplace due to a workplace exposure, exclusion pay is still required. As a reminder, you cannot use an employee’s COVID Supplemental Paid Sick Leave (“SPSL”) as exclusion pay.

As always, please contact us with any questions or concerns.