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## **Employment Update: Cal/OSHA's COVID-19 Prevention Non-Emergency Regulations In Effect - What Does This Mean?**

After weeks of waiting, on Friday, February 3, 2023, the Office of Administrative Law (OAL) finally approved the new COVID-19 Prevention Non-Emergency Regulations adopted by Cal/OSHA on December 15. These regulations are now in effect as of February 3, 2023 and will remain in effect for 2 years with recordkeeping requirements applicable for 3 years.

The new non-emergency regulations have many similarities with the Emergency Temporary Standards (ETS), but overall the new regulations are less burdensome for employers. Important aspects of the regulations are highlighted below:

- **Close Contact:** The definition of “close contact” is now defined by looking at the size of the workplace in which the exposure takes place.
  - For indoor airspaces of 400,000 or fewer cubic feet, “close contact” is defined as sharing the same indoor airspace with a COVID-19 case for a cumulative total of 15 minutes or more over a 24-hour period during the COVID-19 case’s infectious period.
  - For indoor airspaces of greater than 400,000 cubic feet, “close contact” is defined as being within 6 feet of a COVID-19 case for a cumulative total of 15 minutes or more over a 24-hour period during the COVID-19 case’s infectious period.
  - Offices, suites, rooms, waiting areas, break or eating areas, bathrooms, or other spaces that are separated by floor-to-ceiling walls shall be considered distinct indoor spaces.
  - The new FAQ (see link below) includes an example of how to calculate the size of the workplace.
- **Face Covering:** Employers must still provide face coverings and ensure they are worn by employees when required by orders from the CDPH. Currently the CDPH requires employees who return to work after having COVID-19 and employees who are exposed to COVID-19 via close contact to wear masks for a period of 10 days from the positive test or last exposure. All employees in the exposed group are required to wear masks during an outbreak, and masks are still required at all times in specific high-risk settings such as healthcare, long-term care, senior care facilities, homeless shelters, and correctional facilities. Employers also must allow employees to wear face coverings and provide them at no cost if the employee chooses to wear them (unless it would be a safety hazard). Employers may choose to require face coverings at the workplace even when not mandated by the regulations or CDPH guidelines.
- **COVID Testing:** Employers must still make COVID-19 testing available at no cost and during paid time to employees following a close contact in the workplace, except for “returned cases.” A “returned case” is defined as a COVID-19 case who was excluded from work but returned to and

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did not develop any COVID-19 symptoms after returning. A person can be considered a returned case for 90 days after the initial onset of COVID-19 symptoms or, if the person never developed COVID-19 symptoms, for 90 days after the first positive test.

- Exclusion/Quarantine: The isolation and quarantine periods have not changed from the previous ETS. You can access the isolation and quarantine period chart [here](#). As a reminder, employees who test positive for COVID-19 must be excluded from the workplace for at least 5 days, and isolation can end after day 5 if symptoms are not present or are resolving and the employee tests negative. When the employee returns they must wear a face covering around others for 10 days. Close contacts who are asymptomatic do not have to be excluded from the workplace, but they must test within 3-5 days following the last close contact and wear a mask around others for 10 days following the exposure.
- Exclusion Pay: Cal/OSHA no longer requires employers to pay employees while they are excluded from work due to COVID-19 reasons. However, the regulations still require employers to provide employees with information regarding COVID-19 related benefits they may be entitled to under federal, state, or local laws or the employer's leave policies. For example, if an employee is sick with COVID-19, they could choose to use any accrued and unused paid sick leave.
- Outbreaks: There are still additional requirements in the event of an outbreak (3 or more employees in an exposed group test positive in 14-day period) or major outbreak (20 or more employees test positive in 30-day period). Additionally, employers will be required to report major outbreaks to Cal/OSHA.
- IIPP/CPP: Employers will no longer be required to maintain a separate COVID Prevention Plan (CPP). Instead, employers must address COVID-19 as a workplace hazard in their IIPP, which includes measures to prevent workplace transmission, employee training, and methods for responding to COVID-19 cases at the workplace. However, employers can still choose to maintain a separate CPP. Cal/OSHA published a new model CPP, which is downloadable through [this link](#). All employers should update their CPP accordingly and can choose to include it as a part of their IIPP, or keep it as a separate document.

Cal/OSHA published a comprehensive FAQ for the new regulations, which can be found [here](#).

With the California coronavirus emergency declaration set to expire on February 28, 2023, it is unknown how this may change any of the COVID-related CDPH guidelines referenced in the CAL/OSHA COVID-19 Prevention Non-Emergency Regulations. We will provide you updates as we learn more.

As always, please feel free to reach out with any questions or concerns.