

California Institutes New COVID-19 Cal-OSHA Temporary Emergency Standards

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Effective November 30, 2020, the California Department of Industrial Relations approved California OSHA (Cal-OSHA) temporary emergency COVID-19 standards. The standards amend California Labor Code section 3205, and create new sections 3205.1, 3205.2, 3205.3, and 3205.4. The emergency standards are set to expire in 180 days on **May 29, 2021**, unless they are readopted prior to that date. Exempt from the emergency standards are employers (i) whose workplace has only one employee who does not come into contact with other individuals; (ii) whose employees are working entirely from home; or (iii) whose employees are covered by the Aerosol Transmissible Diseases regulation.¹

COVID-19 Prevention Program

The new emergency COVID-19 standards require that employers create a written COVID-19 prevention program. The program may be included in the employer's Injury and Illness Program required under Cal-OSHA, or may be a separate document.

This prevention program must outline procedures for communication of the employer's COVID-19 policies and procedures, and information regarding potential COVID-19-related events at the employer's workplace. Employers must include procedures for: reporting possible COVID-19 symptoms, exposures, and hazards in the workplace; accommodating employees who are at an increased risk of severe COVID-19 illness; access to COVID-19 testing, and if testing is required under the program, the reason for the COVID-19 testing and the possible consequences of a positive test; and communication of the employer's COVID-19 policies and procedures and COVID-19 hazards to employees and other persons and entities (such as independent contractors) working within, or in contact with, the employer's workplace.

The prevention program also must create procedures for identifying, evaluating and correcting COVID-19 hazards, as defined by the statute, in conjunction with California and local health department guidelines. It must allow participation in this process by both employees and any authorized employee representatives (i.e. union), and there are a number of required steps in the evaluation process outlined in the statute, including periodic inspections to ensure compliance. The program must also set out a procedure for investigating and responding to COVID-19 cases within the workplace and create training and instruction procedures related to COVID-19. More information about these requirements can be found [here](#).

Screening and Preventative Requirements

The prevention program also must include a screening procedure for identifying employees with COVID-19 symptoms, and responding to affected employees. If screening is conducted at the workplace, face coverings must be worn by both the screener(s) and employee(s) during the screening. If temperatures are taken during screening, non-contact thermometers must be used.

The prevention program must also include physical distancing requirements of at least six feet between each employee, or as far apart as possible when a six foot distance cannot be achieved.

The program also must state that the employer will provide clean, undamaged face coverings and identify when

¹ Please note that, due to the length of the standards only the key points are addressed here.

employees must wear the face coverings and when they can be removed, per to the statutory requirements. Employees who cannot wear face coverings due to a medical or mental health condition or disability, or those who are hearing impaired or are communicating with a hearing-impaired person may be exempted from the face covering requirement. If the employee's condition or disability permits, the employee must wear an effective, non-restrictive alternative to a face covering such as a face shield.

Employers must put in place policies and procedures designed to minimize exposure to COVID-19 hazards created by any person not wearing a face covering, including employees exempt from wearing a face covering, which must include the elements outlined in the statute. This includes cleaning, disinfection, and handwashing procedures, the use of personal protective equipment and partitions, and maximizing ventilation. Employers cannot prevent employees from wearing a face covering when not otherwise required unless the face covering would create a safety hazard.

Reporting and Recordkeeping Requirements

Finally, the employer must collect specific information about workplace COVID-19 cases and maintain records of this information. The employer must also report certain information about workplace COVID-19 cases to the local health department and Cal-OSHA. Records of the written COVID-19 prevention program must also be maintained.

Required Procedures for Multiple Workplace Diagnoses of COVID-19 or an Outbreak

The emergency COVID-19 standards also outline additional procedures that must be followed if there are three or more COVID-19 cases in the workplace within a 14-day period, or if there is an outbreak, which is defined as 20 or more COVID-19 cases in a single workplace within a 30-day period.

First, the employer must provide free COVID-19 testing during working hours to any employees who were at the exposed workplace as specified within the statute.

Second, the employer must immediately investigate and determine whether the workplace contributed to the COVID-19 cases or outbreak and evaluate its COVID-19 related policies and procedures to determine and implement any changes necessary to prevent further spread. This investigation and review must be documented and kept up to date if the cases or outbreak continue. In the event of an outbreak, and the investigation identifies a COVID-19 hazard, the employer must take additional steps, including evaluating whether a respiratory protection program is needed and whether to halt some or all operations at the workplace until the hazard is corrected.

Third, the employer must notify the local health department immediately (and no more than 48 hours) after the employer knows or should have known of three or more COVID-19 cases in the workplace within a 14-day period. This notification must include: the total number of COVID-19 cases in the workplace, along with certain identifying information regarding each case, and must be updated for each subsequent reported case at the workplace.

Additional Preventative Steps for Employer-Provided Housing and Transportation

If an employer provides its employees with housing or transportation to and from work, it must comply with additional requirements designed to prevent the transmission of COVID-19. Should either of these situations apply to your workplace, contact us for additional information.

If you have any questions regarding the topics discussed in this article, please contact **Candice T. Zee** at +1 (424) 204 7771, **Ashley D. Stein** at +1 (424) 204 7770 or any Vedder Price attorney with whom you have worked.

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