

CALIFORNIA UPDATES ITS COVID-19 EMERGENCY TEMPORARY STANDARD FOR WORKPLACE SAFETY

On April 21, 2022, Cal/OSHA's Standards Board voted to approve the Third Readoption of the Cal/OSHA COVID-19 Emergency Temporary Standard ("ETS"). The amended ETS took effect on May 6, 2022 and will remain in effect until December 31, 2022.

Here is a summary of the most significant changes that will affect employers:

- 1. Deferment to CDPH for Quarantine Guidance:** The ETS now defers to the California Department of Public Health ("CDPH") guidance regarding exclusion requirements for close contacts stating, "Employers shall review current CDPH guidance for persons who had close contacts, including any guidance regarding quarantine or other measures to reduce transmission."

The CDPH's isolation and quarantine guidelines were last updated on April 6, 2022 and can be found here:

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Guidance-on-Isolation-and-Quarantine-for-COVID-19-Contact-Tracing.aspx>

- 2. Removing the definition of "fully-vaccinated" from the ETS:** This is significant because it means the ETS will no longer distinguish between fully-vaccinated and not-fully-vaccinated employees. In other words, most requirements of the ETS will apply in the same manner regardless of vaccination status, including:

- **Testing Requirements:** Employers will have to offer testing to all symptomatic employees, and all employees with a workplace close contact, regardless of vaccination status. Testing must be provided at no cost to the employee, and during paid working time. The only exception will be based on whether an exposed employee has recently had and recovered from COVID-19.
- **Provision of Respirators:** ALL employees regardless of vaccination status are entitled to a respirator (e.g. N95s) for voluntary use, free of charge, upon request.

- 3. Removal of Cleaning/Disinfection Requirements & Partitions:** In the new ETS, Cal/OSHA deleted the cleaning and disinfecting procedures. Additionally, employers are no longer required to consider or use cleanable solid partitions during outbreaks, when social distancing cannot be maintained.

- 4. New term, "returned cases," has been added:** This refers to employees with naturally-conferred immunity, i.e. employees who have recovered from COVID-19 in the past 90 days and remain symptom free.

- If such employees have had a workplace close contact, employers are not required to offer them testing. Nor are employers required to offer such employees testing if they are part of an outbreak's "exposed group."

5. Updates to Face Covering Rules:

- Face coverings are no longer required for employees who are not fully vaccinated. This has been the case since February 28, 2022, when Governor Newsom issued an Executive Order overriding the ETS. The third readoption codifies that Executive Order.
- Cal/OSHA removed the requirement that certain fabric masks, when masking is required, must not allow light to pass through. As such, employers no longer need to conduct a "light test" for these face coverings to be compliant.
- Face coverings will still be required:
 - i. If State or local order requires them;
 - ii. For employees who have tested positive and are returning to work before 10 days have passed since their symptoms began, or 10 days since they tested positive if they never developed symptoms; or
 - iii. For all employees indoors in an exposed group during a workplace outbreak or major outbreak, or those outdoors who cannot maintain 6 feet of distance from others.

6. Updates to Definition of "Testing": The definition of testing will be updated to allow for self-administered and self-read tests for purposes of return-to-work clearance, but only if another means of independent verification of the results can be provided (e.g., a time-stamped photograph of the results).**7. New Obligations if COVID-19 Outbreaks Occur:**

- During a minor or major outbreak, employees who had close contacts must stay home until they present a negative COVID-19 tests taken within three and five days after the close contact; otherwise they must follow the return-to-work criteria of the ETS.
- During an outbreak, an employer shall evaluate whether to implement social distancing. Where six feet of social distancing is not feasible, the employer shall evaluate implementing as much distance as possible between persons.
- Under the current ETS language, during a workplace outbreak, Employees in the exposed group must be tested twice in the following week and test negative or be excluded from the workplace and follow the other return-to-work requirements of the ETS.

Employers should remember that despite these revisions, the rest of the ETS continues to remain in effect. This includes notification requirements following a COVID-19 case in the workplace and the obligation to maintain a Written COVID-19 Prevention Program.