

SAN FRANCISCO EMPLOYER UPDATE REGARDING LATEST COVID-19 WORKPLACE GUIDANCE (UPDATED 6/18/21)

In the past few weeks, employers have been faced with an onslaught of confusing and often conflicting guidance regarding workplace COVID-19 restrictions. Fortunately, San Francisco employers now have some clarification from the City and County of San Francisco and Cal/OSHA.

On June 15, 2021, the San Francisco Health Officer issued the Safer Return Together Health Order C19-07y ("Health Order"). This Health Order will continue until amended or rescinded by the Health Officer. The Health Officer also terminated and rescinded many of the prior orders and directives relating to COVID-19.

On June 17, 2021, the Cal/OSHA Standards adopted the revised COVID-19 Prevention Emergency Temporary Standards ("ETS"), which included relaxed masking and social distancing protocols for the workplace. Governor Gavin Newsom signed an executive order to allow the revisions to immediately take effect.

Below is the key information employers should know as they prepare to reopen offices and welcome back staff:

1. Updated Mask Guidance:

Employers may allow fully vaccinated employees to not wear face coverings indoors. If there is a minor workplace outbreak (3 cases in a 14-day period), all employees must wear face coverings indoors and outdoors when six-feet physical distancing cannot be maintained, regardless of vaccination status.

Face coverings are required indoors and in vehicles for unvaccinated employees. Employees in certain indoor settings must wear a face covering regardless of vaccination status if required by California Department of Public Health ("CDPH") order. As of June 15, those indoor settings where the CDPH requires face coverings include public transit, K-12 educational facilities, health care and long-term care settings, correctional and detention facilities, and shelters (homeless or emergency shelters and cooling centers).

Unvaccinated individuals are not required to wear a mask only in the following instances:

- When alone in a room or vehicle.
- When eating and drinking.
- When an accommodation is required.
- When job duties make a face covering infeasible or create a hazard

2. Documenting Vaccination Status:

Employee vaccination status must be documented; however, the revised ETS does not specify a particular method for such documentation. The employer must record the vaccination status for any employee not wearing a face covering indoors and this record must be kept confidential. Acceptable options include:

- Employee provides proof of vaccination (vaccine card, image of vaccine card or health care document showing vaccination status) and employer maintains a copy.
- Employee provides proof of vaccination and employer maintains a record of who presented proof, but not the vaccine record itself.
- Employee self-attests to vaccination status and employer maintains a record of who self-attests.

Nothing in the revised ETS prevents an employer from requiring all employees to wear a face covering instead of having a documentation process.

An employee has the right to decline to state if they are vaccinated or not. In that case, the employer must treat the employee as unvaccinated and must not take disciplinary or discriminatory action against the employee.

3. Testing Requirements:

Employers must offer testing at no cost to employees during paid time as follows:

- Symptomatic unvaccinated employees, regardless of whether there is a known exposure. This is a new requirement.
- Unvaccinated employees after an exposure.
- Vaccinated employees after an exposure if they develop symptoms.
- Unvaccinated employees in an outbreak.
- All employees in a major outbreak (20 or more cases in a 30-day period).

4. Providing Respirators "Upon Request":

An employer must provide respirators in two scenarios: (1) to any unvaccinated employee who works with others indoors or in a vehicle and who requests one; and (2) where there is a major outbreak, to any employee in the exposed group for voluntary use. The respirator must be the right size, and the employee must receive basic instruction on how to get a good "seal," or fit.

An employer may either stock respirators and offer them to employees or may poll workers to determine which employees wish to be provided a respirator before obtaining them. However, once an employer has established that it has employees who wish to wear respirators, it should have enough on hand of the correct size and type to fulfill reasonably foreseeable requests upon demand. If an employee prefers

to select and purchase their own respirator, an employer may permit this alternative, as long as the employer reimburses the employee in timely manner. In a major outbreak, respirators must be offered to employees regardless of vaccination status and without waiting for a request from the employee. The employer must offer respirators immediately upon determining a major outbreak is underway.

5. Social Distancing:

Employers are no longer required to implement physical distancing or barrier requirements regardless of employee vaccination status with the following exceptions:

- Employers must evaluate whether it is necessary to implement physical distancing and barriers during a minor outbreak.
- Employers must implement physical distancing and barriers during a major outbreak.
- Employers may implement additional protective measures than are required, including the use of physical distancing and barriers.
- Employers are under an ongoing requirement to assess workplace hazards and implement controls to prevent transmission of disease. There may be circumstances in which employers determine that physical distancing is necessary in their workplace.

6. COVID-19 Safety Plan:

The City and County of San Francisco is no longer requiring employers to post a Health & Safety Plan/Social Distancing Protocol. However, Cal/OSHA still requires employers to have such a plan in place. A template for a Cal/OSHA-compliant plan can be found here:

<https://www.dir.ca.gov/dosh/coronavirus/EducationMaterials.html>

7. Employers Must Allow Staff to Stay Home When Sick:

Employers are required to follow Cal/OSHA rules and regulations allowing staff to stay home where they have symptoms associated with COVID-19 that are new or not explained by another condition or if they have been diagnosed with COVID-19 (by a test or a clinician) even if they have no symptoms. Also, employers must comply with California Senate Bill ("SB") 95, which provides that employers with more than 25 employees must give every employee 80 hours of COVID-related sick leave.

Employers are prohibited from taking any adverse action against employees for using leave provided by SB 95.

8. San Francisco COVID-Related Employment Protections Ordinance:

The San Francisco COVID-Related Employment Protections Ordinance prohibits employment discrimination on the basis of COVID-19 status. Under this Ordinance, employers may not fire, threaten to fire, suspend, discipline, or in any other manner

take an adverse action against an employee who is absent or unable to work, or who requests time off from work, because the employee tested positive for COVID-19 or is isolating or quarantining due to COVID-19 symptoms or exposure.

Further, employers may not rescind an offer to employ or contract with an applicant, or decide not to employ or contract with an applicant, who has tested positive for COVID-19 or is isolating or quarantining due to COVID-19 symptoms or exposure. The ordinance is in effect until March 6, 2023

9. Reporting Positive COVID-19 Cases:

Consistent with Cal/OSHA rules and regulations, employers must require that all staff immediately alert the employer if they test positive for COVID-19 and were present in the workplace either (1) within the 48 hours before onset of symptoms or within 10 days after onset of symptoms if they were symptomatic; or (2) within 48 hours before the date on which they were tested or within 10 days after the date on which they were tested if they were asymptomatic.

If an employer learns that three or more of its staff are confirmed positive cases of COVID-19 and visited the workplace within a 14-day period, then the employer must call the San Francisco Department of Public Health ("DPH") at 628-217-6100 immediately to report the cases and in any event no later than the next business day after learning of those positive cases.

10. Notifying Employees of Positive COVID-19 Cases:

AB 685 took effect January 1, 2021, and imposes new notice and reporting requirements on employers when an employee tests positive for COVID-19.

AB 685 requires employers having notice of a potential COVID-19 exposure (e.g., individual testing positive for COVID-19 was in the workplace) provide a written notice to employees and subcontractor employees who were at the worksite when a potentially infected individual was there and may have been exposed to COVID-19 as a result; and, employees' exclusive representative, if applicable.

This notice must be provided within one business day of the employer being notified of a potential exposure and may be done in "a manner that the employer normally uses to communicate employment-related information," such as personal service, mail, or text message. The notice should be drafted to protect employee privacy and without disclosure of personally identifiable information or personal health information. The notice should also include information on COVID-19 benefits the employee may be entitled to and the disinfection and safety plan the employer has implemented or plans to implement in accordance with guidance from the Centers for Disease Control and Prevention.

11. Protecting staff health:

Screening symptoms:

Employers must develop and implement a process for screening staff for COVID-19 symptoms, but this requirement does not mean they must perform on-site screening of personnel. Employers should ask staff to evaluate their own symptoms before reporting to work.

Encouraging staff to get vaccinated: The City and County of San Francisco is not mandating that employers require vaccinations, but state that staff should be "encouraged" to get vaccinated.

Employers in "high risk settings" (meaning certain care or living settings involving many people, including many congregate settings, where vulnerable populations reside out of necessity and where the risk of COVID-19 transmission is high, consisting of general acute care hospitals, skilled nursing facilities, residential care facilities for the elderly, homeless shelters, and jails) have additional vaccination tracking and reporting requirements. Ventilation: Employers must evaluate ventilation systems to maximize outdoor air and increase filtrations efficiency, and evaluate the use of additional air cleaning systems.

12. Required Signage:

All San Francisco businesses must post signage about COVID-19 prevention and getting vaccinated. Posting the following signage will satisfy this requirement:

- <https://sf.gov/sites/default/files/2021-06/BestPractices-8.5x11-060921.pdf>
- <https://sf.gov/sites/default/files/2021-06/GetVaccinated-white-8.5x11-060821.pdf>