

California Imposes Sweeping COVID-19 Requirements on Employers Related to Prevention, Notification, Reporting, Testing, Mandatory Quarantine Periods, and Pay Continuation

December 24, 2020

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Effective November 30, 2020, California's Division of Occupational Safety and Health ("Cal-OSHA") has adopted broad [emergency regulations](#) on COVID-19 workplace prevention. These requirements remain in effect for 180 days and may be subject to extensions.¹

These extensive regulations impose a number of new and potentially onerous requirements on most California employers to establish, implement, and maintain a written COVID-19 prevention program. As part of this program, employers must now meet certain guidelines with respect to identification, investigation, communication, training, and protection relating to COVID-19 in the workplace. Significantly, employers must also continue and maintain earnings, seniority, and all other employee rights and benefits for employees who are excluded from the workplace because they fall under the definition of a "COVID-19 case" or have had "COVID-19 exposure" (unless the employer can prove that the exposure is not work-related). Moreover, employers cannot require a negative COVID-19 test result for an employee to return to work.

Last week, business groups sued Cal-OSHA to stop the implementation or enforcement of the sweeping regulations, claiming among other things that (i) Cal-OSHA is not "following the science," as there is no supported causal nexus between reopening businesses and the increase in COVID-19 cases; (ii) the regulator exceeded its authority by attempting to regulate wages and paid leave; and (iii) Cal-OSHA is forcing businesses to bear the financial burdens of testing and quarantining without due process.² Despite

¹ This Advisory merely contains a summary of the requirements for COVID-19 prevention programs. The requirements are spelled out in significant detail in the emergency regulations. Additionally, the Department of Industrial Relations has issued [FAQs](#) and a [fact sheet](#).

² *National Retail Federation et al. v. California Department of Industrial Relations*, Division of Occupational Safety and Health et al., case number unavailable, in California Superior Court, County of San Francisco.

these challenges, unless and until the regulations are withdrawn, invalidated, or expire, there could be consequences for noncompliance.

Applicability

The new standards apply to all workplaces in California, except:

- workplaces with only one employee who has no contact with others;
- employees working from home; and
- employers covered by the more stringent regulations set forth in [Cal-OSHA's Aerosol Transmissible Diseases Standard](#), which applies to work at certain health care facilities, laboratories, and a limited number of other employers.³

Requirements for the Written COVID-19 Prevention Program

The core mandate is that employers must prepare, implement, and maintain a written COVID-19 prevention program, which may be a stand-alone program or incorporated into the employer's [Injury & Illness Prevention Program](#).

The COVID-19 prevention program must establish mechanisms through which the employer can:

- communicate information to employees about COVID-19,
- identify and evaluate and correct COVID-19 hazards,
- investigate and respond to COVID-19 cases in the workplace,
- provide COVID-19 training and instruction to employees,
- ensure physical distancing, and
- provide face coverings and ensure they are worn properly.

Cal-OSHA has published a [model plan template](#) that may assist employers in creating their own program and policies as required by the emergency standards and other laws (as discussed further below).

³ Health care employers excluded from Cal-OSHA's new emergency COVID-19 regulations include hospitals; skilled nursing facilities; clinics, medical offices, and other outpatient medical facilities; facilities where high-hazard procedures are performed; home health care; long-term health care facilities and hospices; medical outreach services; paramedic and emergency medical services, including when provided by firefighters and other emergency responders; and medical transport.

Specific Mandates of the Emergency Standard

Existing COVID-19 safety plans may not cover the exacting requirements of these new regulations. Employers must now include in their COVID-19 Prevention Plans—and, of course, comply with—all of the following provisions:

- **Notification of Potential COVID-19 Exposure**
 - Within one business day of potential COVID-19 exposure, employers must notify potentially exposed employees (and their authorized representatives), independent contractors, and other employers present at the workplace of such potential exposure.
 - **“COVID-19 exposure”** means the person was within six feet of a “COVID-19 case” (defined below) for 15 cumulative minutes or greater within any 24-hour period within the **“high-risk exposure period,”** defined as follows:
 - for a *symptomatic* COVID-19 case, from two days before to 10 days after onset of symptoms *and* at least 24 hours after resolution of fever and improvement of other symptoms, or
 - for a *positive* COVID-19 test but *no symptoms*, from two days before to 10 days after the collection of the test specimen leading to a positive test result.
 - A **“COVID-19 case”** includes a person who has had a positive COVID-19 test, is subject to a COVID-19-related order to isolate issued by a local or state health official, or has died due to COVID-19 by determination of a local health department.
 - Personal identifying information of COVID-19 cases or persons with COVID-19 symptoms must be kept confidential.
- **Exclusion of COVID-19 Cases and Exposed Employees from the Workplace**
 - COVID-19 cases *must be excluded* from the workplace until the following guidelines are met:
 - For employees with *symptoms*, all conditions must be met:
 1. at least 24 hours have passed since a fever of 100.4 degrees or higher has resolved without the use of fever-reducing medications,
 2. COVID-19 symptoms have improved, and
 3. at least 10 days have passed since COVID-19 symptoms first appeared.

- For employees *without symptoms*, at least 10 days have passed since the specimen collection for a positive COVID-19 test.
 - Potentially exposed employees must be excluded from the workplace at least 14 days from the last known date of exposure.
 - Exclusion from the workplace may be longer if the employee is subject to a local or state isolation or quarantine order.
 - An employer **may not** require a negative COVID-19 test result for an employee's return to work.
- **Continuation of Earnings and Benefits: Exclusion Pay**
 - If an employee is excluded from the workplace due to COVID-19 infection or exposure but is otherwise able and available to work, then earnings and benefits must be continued.
 - *There are no caps to the pay continuation requirement*, but an employer may require the employee to exhaust paid sick leave benefits before providing exclusion pay, and it may offset payments by the amount an employee receives in other benefit payments. However, employers must make up the difference where any of those benefits fall short of an employee's full earnings and benefits.
 - If an employer demonstrates that the employee's COVID-19 exposure was not work-related, then the employer is not required to comply with the exclusion pay requirements.
- **COVID-19 Testing**
 - Employers must offer COVID-19 testing at no cost and during working hours to all employees with potential COVID-19 exposure in the workplace. The time an employee spends being tested is considered compensable hours worked.
 - If there are multiple COVID-19 infections or a COVID-19 outbreak, then all employees in the exposed workplace must be tested immediately and once a week until there have been no new cases detected in the workplace for 14 days.
 - An "**outbreak**" is defined as three or more cases in an "exposed workplace" within a 14-day period.
 - An "**exposed workplace**" means any work location, working area, or common area at work used or accessed by a COVID-19 case during the high-risk period, including bathrooms, walkways, hallways,

aisles, break or eating areas, and waiting areas. The exposed workplace does not include buildings or facilities not entered by a COVID-19 case.

- Where there is a major outbreak of COVID-19, all employees in the exposed workplace must be tested twice a week until there have been no new cases detected the workplace for 14 days.
 - A “**major outbreak**” is defined as 20 or more cases in an exposed workplace in a 30-day period.
- All employees must be notified of testing options pursuant to the employer’s COVID-19 prevention program.
- The California Department of Fair Employment and Housing has issued [COVID-19 FAQs](#), reflecting that antibody testing will not be permitted at all—only viral testing. And a negative viral test result may not be required as a condition for an employee to return to work.

- **Reporting**

- Employers must report information regarding COVID-19 cases at the workplace to the local health department in accordance with current legal requirements.
- Employers must report a serious illness or death of an employee occurring in a place or employment or in connection with any employment, in accordance with workers’ compensation reporting requirements.
- Immediately, but no longer than 48 hours after an employer knows (or with diligent inquiry would have known) of three or more COVID-19 cases, such employer must contact the local health department to report this and for guidance on preventing further spread of COVID-19 in the workplace.

Additional Reporting Requirements Under AB 685 and SB 1159. Besides the reporting requirements under the emergency standard, there are additional reporting requirements under SB 1159 and AB 685 of which employers should be aware.

[SB 1159 Workers’ compensation: COVID-19: critical workers.](#)

- Effective since September 18, 2020, and through January 1, 2023, SB 1159 creates a *rebuttable presumption* that an employee’s illness related to COVID-19 is an occupational injury if:
 - The employee was a certain type of health care worker or emergency responder, or

- There was an “**outbreak**” at the specific place of employment, defined as one of the following within 14 calendar days:
 - If the employer has 100 employees or fewer at a specific place of employment, four employees test positive for COVID-19;
 - If the employer has more than 100 employees at a specific place of employment, 4 percent of the number of employees who reported to the specific place of employment test positive for COVID-19; or
 - A specific place of employment is ordered to close by a government agency.
- Employers must report to their workers’ compensation claims administrator that an employee tested positive for COVID-19 within three business days that they knew or reasonably should have known of the positive test. The report must be in writing and not include the identity of the employee unless the employee files a claim.
- Additionally, there is a retroactive obligation for an employer to report known COVID-19 cases on or after July 6, 2020, to its workers’ compensation claims administrator.

AB 685 COVID-19: imminent hazard to employees: exposure: notification: serious violations.

- Effective January 1, 2021, there are enhanced reporting requirements under AB 685. AB 685 mandates that employers:
 - notify all employees at a workplace of potential exposures, COVID-19 benefits and protections, and disinfection and safety measure that will be taken at the workplace in response to the potential exposure, and
 - notify local public health agencies of all workplace outbreaks (three or more cases in a two-week period).
- **Recordkeeping**
 - Employers must track and maintain a record of all COVID-19 cases with the employee’s name, contact information, occupation, location where the employee worked, the date of the last day at the workplace, and the date of a positive COVID-19 test.

- The information must be made available to employees, authorized employee representatives, or as otherwise required by law, with personal identifying information removed.
- **Investigation**
 - Employers must have an effective procedure to investigate COVID-19 cases in the workplace, including procedures for verifying COVID-19 case status, receiving information regarding COVID-19 test results and onset of COVID-19 symptoms, and identifying and recording COVID-19 cases.
 - Employers must also investigate whether workplace conditions could have contributed to the risk of COVID-19 exposure and what could be done to reduce exposure to COVID-19 hazards.
- **Health Screening**
 - Employers are required to develop and implement a process for screening employees for, and responding to employees with, COVID-19 symptoms.
 - Employees can be asked to evaluate their own symptoms before reporting to work. If the screening is conducted at the workplace, masks must be worn by both individuals and thermometer must be non-contact.
- **Training and Instruction**
 - Employers must train employees on several policies, procedures, and public health guidance regarding COVID-19, including:
 - the employer's policies and procedures designed to protect employees from COVID-19 hazards;
 - COVID-19 benefits to which the employee may be entitled under applicable federal, state, or local laws (for example, benefits available under worker's compensation, the federal Families First Coronavirus Response Act, the employer's own leave policies, and by contract); and
 - information regarding transmission of COVID-19, prevention of COVID-19 (including washing hands, physical distancing, face coverings), COVID-19 symptoms, and the importance of *not* coming to work and obtaining a COVID-19 test if the employee has COVID-19 symptoms.
 - Cal-OSHA has made [training resources](#) available to employers on its website.

- **Physical Distancing**

- Employers must mandate physical distancing measures. All employees must be separated by at least six feet, where possible, except for momentary exposure while employees are in movement.
- Other methods of physical distancing include:
 - telework or remote working arrangements,
 - reduced presence, including visitors;
 - visual cues, such as signs and floor markings;
 - staggered schedules for arrival, departure, work, and breaks; and
 - adjustments to work processes or procedures to allow greater distance between employees.

- **Face Coverings**

- Employers must provide a face covering (mask) and ensure that employees wear them over the mouth and nose when indoors, when outdoors and less than six feet away from another person, and where required by public health order.
- A face shield may not be utilized as a replacement for a face covering, but they may be worn together.
 - The emergency standards set forth certain enumerated exceptions to the face covering requirement, and also sets forth requirements in the event that an employee is unable to wear a face covering.
- Visitors and other non-employees must be notified of the employer's face covering requirements.
- Employers may not prohibit employees from wearing masks when not otherwise required, except if such usage would create a safety hazard.

- **Other Protective Measures**

- The emergency standards include other protective measures, such as maintaining physical barriers where physical distancing cannot be achieved, providing ventilation and maximizing outside air if feasible, implementing cleaning and disinfecting protocols, promoting and facilitating adequate hand washing, supplying hand sanitizers free of methyl alcohol, and furnishing

additional personal protective equipment if necessary (e.g., gloves, goggles, face shields, and respirators).

Additional Requirements for Employer-Provided Housing and Transportation

Employers that provide housing and/or transportation are subject to additional standards relating to physical distancing, face coverings, cleaning and disinfecting, screening, and isolation of COVID-19 cases.

What California Employers Should Do Now

- Prepare or review your COVID-19 Prevention Plan to ensure compliance with the new standards.
- Ensure that the required COVID-19 prevention measures are in place, including face coverings, social distancing, and disinfection protocols.
- Comply with the specific requirements for responding to COVID-19 exposure in the workplace, including the short turnaround times.
- Visit Epstein Becker Green's [Coronavirus Resource Center](#) for additional information and links.

For more information about this Advisory, please contact:

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