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Cal/OSHA's COVID-19 Standards Now Aligned to Public Health Guidance

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On June 17, 2021, the California Occupational Safety and Health Standards Board ("Standards Board") approved revisions to the emergency temporary standards ("ETS") for COVID-19 prevention that went into effect on November 30, 2020. The revisions align California's workplace requirements with [recent guidance from the California Department of Public Health](#) ("CDPH"). Ordinarily, the approved standards would be subject to a 10-day review by the California Office of Administrative Law for approval, but Governor Gavin Newsom issued an executive order to give the revisions immediate effect.

Many of the requirements of the ETS that went into effect on November 30, 2020, such as requirements to prepare a written COVID-19 Prevention Program, implement training and instruction regarding COVID-19, notification to employees of potential COVID-19 exposure and close contacts, and offers of testing to those with potential exposures remain, but key changes to the ETS alleviate requirements related to the use of masks for fully vaccinated¹ employees, exclusion of fully vaccinated employees from the workplace following a close contact exposure, and physical distancing (regardless of vaccination status). Nevertheless, there are still critical considerations and requirements of which employers must be aware.

Such requirements include:

1. **Face Coverings:** Fully vaccinated employees are no longer required to wear face coverings, except in certain situations (e.g., during outbreaks) or in those situations where CDPH requires face coverings be worn by everyone regardless of vaccination status (e.g., public transit, indoors at K-12 schools, healthcare settings, state and local correctional facilities and detention centers, and homeless and emergency shelters). Employers must document the vaccination status of fully vaccinated employees if they will not be wearing face coverings indoors. Vaccination information should be treated and handled as confidential medical information, separate from an employee's personnel file. Such information also likely qualifies as "personal information" under the California Consumer Privacy Act ("CCPA"). As a result, it would also be prudent to include a CCPA pre-collection notice prior to or in conjunction with asking for vaccination information. Unvaccinated employees, or those who decline to provide documentation of their vaccination status, must continue to wear face coverings indoors. No face coverings are required outdoors, regardless of vaccination status;
2. **Physical Distancing & Barriers:** Physical distancing and barrier requirements are eliminated, except if the employer determines there is a hazard that necessitates physical

distancing or barriers for employee protection. Physical distancing and barriers must be “evaluated” during outbreaks², and are required during major outbreaks³;

3. **Contract Tracing & Exclusion:** Employers must exclude those employees from the workplace who have had a close contact, consistent with earlier requirements under the ETS, unless the employee is (i) fully vaccinated and not showing symptoms or (ii) recovered from COVID-19 within the last 90 days;
4. **Respirators⁴ Must Be Provided for Voluntary Use:** Employers must provide respirators for voluntary use to any unvaccinated employee working indoors. Employers must also provide employees with information about voluntary respirators, and how to properly and safely use them;
5. **Testing for COVID-19 Infection:** Employers must offer testing, at no cost and during paid time, to any employee that is not fully vaccinated and is experiencing COVID-19 symptoms. Additionally, employers must make COVID-19 testing available, at no cost and during paid time, to any employee that has had a close contact in the workplace, except for those who are fully vaccinated before the close contact and do not have COVID-19 symptoms or those who had COVID-19 within the past 90 days and have remained free of COVID-19 symptoms; and
6. **Ventilation:** Employers must evaluate ventilation systems to maximize outdoor air and increase filtration efficiency, and evaluate the use of additional air cleaning systems.

Although the revised ETS now brings California’s workplace standards in line with current public health guidance, employers should still critically review the ETS and take steps to ensure that appropriate mechanisms are in place with respect to the use of face coverings, provision of respirators, tracking vaccination status, and ongoing potential for contact tracing.

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- ¹ The revised ETS (as well as CDC guidance) specifies that a person is “fully vaccinated” once 14 days have passed since the second shot in a two-shot vaccine series or since the only shot in a one-shot vaccine.
 - ² An outbreak is defined as 3 or more COVID-19 cases in an exposed group within a 14-day period.
 - ³ A major outbreak as 20 or more employee COVID-19 cases in an exposed group within a 30-day period.
 - ⁴ A respirator is distinct from a face covering or mask. Respirators provided for voluntary use are typically filtering facepiece respirators, such as N95s.

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