

## **CAL OSHA NEW STANDARDS FOR EMPLOYERS**

**December 4, 2020**

### **WHO IS COVERED OR EXCLUDED**

- **Covered:** All employees and places of employment.
- **Excluded:**
  - Places of employment with one employee who does not have contact with other persons.
  - Employees working from home.
  - Employees already covered by Cal/OSHA's aerosol transmission standard (applicable generally to certain health care facilities, laboratories, and others).

### **ELEMENTS OF THE COVID-19 PREVENTION PLAN**

#### **Written COVID-19 Prevention Plan Required**

California employers must have a Written COVID-19 Prevention Program (WCPP) which is similar to an Injury and Illness Prevention Program (IIPP). The ETS provides that the WCPP may be integrated into an employer's existing IIPP or maintained in a separate document.

The WCPP must include establishing the following procedures:

- System for communicating with employees;
- Identification and evaluation of COVID-19 hazards;
- Investigating and responding to COVID-19 cases in the workplace;
- Correction of COVID-19 hazards;
- Training and instruction;
- Physical Distancing;
- Face coverings;
- Other engineering controls, administrative controls, and PPE;
- Reporting, recordkeeping, and access;
- Exclusion of COVID-19 cases; and
- Return to work criteria.

#### **A. Communication of COVID-19 Policies and Procedures:**

Employers are required to do the following:

- Ask employees to report COVID-19 symptoms and exposure without fear of reprisal;
- Explain how employees at higher risk of the virus can request an accommodation;
- Provide information about access to testing, including the reasons for and possible consequences of such testing; and

- Communicate information about COVID-19 hazards and the employer's policies and procedures within or in contact with the employer's workplace.

**B. Identification and Evaluation of COVID-19 Hazards:**

- Allow employees to participate in identifying and evaluating hazards;
- Develop and implement a process to screen employees and to respond to employees with COVID-19 symptoms;
  - Employees may evaluate their own symptoms before reporting to work.
  - If the employer conducts the screening, both the screeners and the employers must wear masks and a non-contact thermometer must be used if temperatures are measured;
- Establish procedures to respond immediately to COVID-19 cases to prevent and reduce risk of transmission in the workplace;
- Conduct a workplace specific identification of all "interactions, areas, activities, processes, equipment, and materials that could potentially expose employees to COVID-19 hazards," including:
  - (i) locations where employees work in close contact to perform job tasks;
  - (ii) locations where employees congregate (including meetings, time clocks, bathrooms, hallways, aisles, elevators, break rooms, cool-down rest areas, or waiting areas);
  - (iii) locations where employees cannot wear masks or respirators due to other job hazards; and
  - (iv) locations where employees must share equipment or tools.
- Treat all employees, regardless of symptoms or negative test results, as potentially infectious individuals;
- For indoor locations, evaluate how to maximize quantity of outdoor air and increase filtration efficiency to the highest possible level;
- Implement local health orders of the county and the California Department of Public Health;
- Evaluate existing COVID-19 prevention controls and the need to revise or add to such controls; and
- Conduct periodic inspections to identify COVID-19 related hazards and to ensure compliance with policies and procedures.

**C. Investigation of and Responding to COVID-19 Cases In the Workplace:**

The ETS requires employers take the following actions when there is a COVID-19 case at work:

- Determine key dates/times (a) when the COVID-19 case was last present in the workplace; (b) date of the positive test; and (c) date the COVID-19 case had any symptoms;
- Determine who may have exposure by tracking the activities of the COVID-19 case including evaluation of the activities and the locations which may have been present during the high risk exposure period;
- Give notice **within one business day**, while maintaining privacy of the COVID-19 case, to all employees who may have had exposure, their authorized representatives, and all independent contractors and other employees present during the high-risk exposure period;
- Offer free testing during working hours to all employees who had potential exposure and provide information on available benefits; and
- Investigate whether any workplace conditions contributed to the risk of exposure and implement any remedial measures, as needed.
- Maintain as confidential, the personal identifying information of a COVID-19 case or persons with symptoms, including testing and related medical services.
- Implement an effective procedure to investigate COVID-19 cases, verifying case status, receiving information on test results and the onset of symptoms, and identifying and recording cases.

**D. Exclusion of COVID-19 Cases From the Workplace and Return-to-Work Criteria:**

Employers must ensure that COVID-19 cases are excluded from the workplace until return-to-work requirements are met (SEE BELOW);

- **Continuation of Earnings: Employers are now required to continue and maintain an employee's earnings, seniority, and all other employee rights and benefits, including the right to their job status during their exclusion from work. Employers may use company-provided paid sick leave benefits for this purpose and other public benefit programs to maintain earnings, where not covered by workers compensation.**

**Unless:** (1) The employer can show that the COVID-19 exposure is not work related; or (2) where the employee is unable to work for any reason other than excluding them from the workplace to protect others from COVID-19 exposure.

NOTE: This requirement does not have a limit as to the number of times it could apply, so if an employee were "excluded" from the worksite more than once, the employer arguably is required to continue their pay for each occurrence.

- **Return to Work Criteria:**

- **COVID-19 case with COVID-19 symptoms shall not return to work until:**

- At least 24 hours have passed since a fever of 100.4 or higher has resolved without the use of fever-reducing medications;
    - COVID-19 symptoms have improved; and
    - At least 10 days have passed since COVID-19 symptoms first appeared

- **COVID-19 Cases Who Tested Positive but were Asymptomatic shall not return to work until:**

- A minimum of 10 days have passed since the date of specimen collective of their first positive COVID-19 test

- **A negative COVID-19 test shall not be required for an employee to return to work.**

- **If an order to isolate or quarantine is issued, the employee shall not return to work until:**

- The period of isolation or quarantine is completed, or the order is lifted.

- If no period was specified, then the period shall be 10 days from the time the order to isolate was effective, or 14 days from the time the order to quarantine was effective.

**E. Physical Distancing & Face Coverings:**

Implement physical distancing measures unless this is not possible. Measures can include telework, reducing staff working in any one area, signs and floor markings, staggered arrival time and departure and break times, etc.

- Provide face coverings and ensure they are worn by employees except:
  - When an employee is alone in a room;
  - While eating or drinking, provided employees are 6 feet apart and outside air to the area is maximized;
  - While wearing respiratory protection;
  - Those who cannot wear a face covering due to a medical or health condition or disability or hearing impaired or communicating with a hearing impaired person. In these situations:
    - The employee should wear a face shield with a drape or other effective non-restrictive alternative.
    - The employee shall also be at least 6 feet apart from other persons unless the unmasked employee is tested at least 2x weekly.

- Specific tasks that cannot be performed with a face covering
- Communicate to non-employees the face covering requirements
- Develop policies to minimize employee exposure originating from a person not wearing a face covering.

**F. Reporting, Record Keeping and Access to Records:**

- Report COVID-19 cases to Cal/OSHA and the local health department when required by law;
- Report immediately to Cal/OSHA any COVID-19 related serious illness or death of an employee occurring in a place of employment or in connection with any employment;
- Maintain records of steps taken to implement the written COVID-19 Prevention Program;
- Make the Written COVID-19 Preparation Program available to employees; and
- Keep a record of and track all COVID-19 cases, with medical information kept confidential. The information should be made available to employees, with personal identifying information removed.

**G. Correcting Hazards:**

Employers must implement effective policies and/or procedures for correcting unsafe or unhealthy conditions, work practices, policies, and procedures in a timely manner.

**H. Training and Enforcing safety procedures:**

Employers must implement policies for training and enforcement on several topics relating to COVID-19, including the following:

- The employer's COVID-19 Prevention Plan;
- Information on available COVID-19 related benefits under Federal, State, and local laws (e.g. FFCRA benefits, workers compensation benefits, Paid Sick Leave, FMLA, CFRA, other leaves, etc.);
- Education on the transmission of the virus and preventing its spread, including that it can easily spread through the air, travel more than 6 feet, and spread through commonly used items and equipment, and the importance of using face masks in combination with social distancing requirements and frequent hand washing or sanitizing;
- Methods of enforcing physical distancing;
- Procedures for enforcing use of face masks, and methods safeguarding employees from COVID-19 where face masks are not possible. Where respirators are required, the employer must provide procedures outlining how the employer will comply with Cal/OSHA's respiratory protection program requirements; and
- Exceptions to the mask requirement, including due to medical conditions and disabilities.

**I. Additional Workplace Controls:**

The employer is required to undertake additional steps to minimize the risk of COVID-19 infections, including the following:

- Use of solid barriers at fixed work locations, where physical distancing is not possible;
- Maximize quantity of outdoor air except when air quality index is greater than 100;
- Implement cleaning and disinfecting procedures, including (a) identifying and cleaning or disinfecting frequently touched surfaces; (b) prohibiting sharing of PPE and items that employees come into regular contact with; (c) cleaning or disinfecting of areas used by the COVID-19 case during the high risk exposure period; (d) encouraging and allowing time for handwashing ; and (e) increasing handwashing facilities as needed; and
- Evaluate need for PPE and respiratory protection and provide such equipment as needed.

**J. Employer Provided Housing and Transportation:**

For employers that provide housing and transportation to employees, there are special requirements such as ensuring housing units are cleaned at least once a day, providing 6 feet of distancing in dormitories, and providing private spaces for exposed employees to isolate.

**MULTIPLE COVID-19 INFECTIONS AND COVID-19 OUTBREAKS.**

The new ETS also requires an employer to report and provide notice of potential “outbreaks.”

**What is An Outbreak:**

Three or more COVID-19 cases in an exposed workplace within a 14 day period.

**What To Do If An “Outbreak” occurs:**

**Testing:** Until there are no new COVID-19 cases detected in the workplace for a 14 day period of time, the following must occur:

**Multiple Outbreak:**

- All employees present at the exposed workplace shall be tested for free, during their work time, and then tested again one week later (unless the employee was not present during the period of the outbreak);
- The employees who remain at the workplace at least once per week shall receive continuous testing until no new cases are detected for a 14-day period.
- Employers shall provide COVID-19 testing to all employees at the exposed workplace during the period of the outbreak or the relevant 14-day period. This testing must be offered at no charge, during employee working hours, and immediately upon being covered by this outbreak definition. Employers must then offer this same testing again one week later for the same employees. After the first two required COVID-19 tests, employers shall provide continuous COVID-19 testing of employees who remain at the

workplace at least once per week or provide testing more frequently if recommended by the local health department.

**Major Outbreak:** Twenty or more COVID-19 cases in a workplace within a 30 day period.

- Employers shall provide twice a week COVID-19 testing, or more frequently if recommended by the local health department, to all employees present at the exposed workplace during the relevant 30-day period(s) and who remain at the workplace.
- COVID-19 testing shall be provided at no cost to employees during employees' working hours.

**Exclusion of Covid-19 cases:** Covid-19 cases and those who had exposure are to be excluded from the workplace as set forth above.

**Investigation:** The employer shall investigate possible workplace factors that contributed to the outbreak and implement remedial measures as needed.

**Reporting: The employer shall report the outbreak to the local health department within 48 hours after the employer knows or with diligent inquiry would have known of 3 or more COVID-19 cases.**

## CONSEQUENCES FOR NON COMPLIANCE WITH THE ETS

Non-compliance can result in a fine similar to other violations of Cal-OSHA regulations. Different penalties attach to the different classifications of citations, which are Regulatory, General, Serious, Repeat, and Willful.

Regulatory penalties typically attach to posting and recordkeeping requirements; General is typically for violations having some non-serious relationship safety and health; and Serious may attach if there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation.

Penalty amounts can range from the maximum penalty for Regulatory or General violation of \$13,277 to the maximum for Serious Violation of \$25,000, and the maximum for Repeat or Willful Violation in the staggering amount of over \$100,000.00.

## DEFINITIONS

The following definitions apply to the ETS:

**"COVID-19 symptoms"** means fever of 100.4 degrees Fahrenheit or higher, chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea, unless a licensed health care professional determines the person's symptoms were caused by a known condition other than COVID-19.

**"High-risk exposure period"** means the following time period:

- 1) For persons who develop COVID-19 symptoms: From two days before they first develop symptoms until 10 days after symptoms first appeared, and 24 hours have passed with no fever, without the use of fever-reducing medications, and symptoms have improved; or

(2) For persons who test positive who never develop COVID-19 symptoms: From two days before until ten days after the specimen for their first positive test for COVID-19 was collected.

**“COVID-19 exposure”** means being within six feet of a COVID-19 case for a cumulative total of 15 minutes or greater in any 24-hour period within or overlapping with the “high-risk exposure period” defined by this section. This definition applies regardless of the use of face coverings.

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*As the guidance issued by the state and federal agencies is regularly changing, as is the medical information known about COVID-19, this memo is provided solely as a reference tool to be used for informational purposes and should not be construed or interpreted as providing legal advice related to any specific case or cases.*

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