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## **Cal/OSHA Revised COVID-19 ETS to Align with Updated CDC Guidelines**

The biggest COVID news lately is that the Centers for Disease Control (CDC) has issued new guidance reducing the length of isolation and/or quarantine under certain circumstances. The CDC's update was issued December 27, 2021 as a Media Statement and Guidance, and the FAQs are expected to be updated accordingly. The full text of the CDC media statement can be found [here](#).

Almost immediately after that, on December 30, 2021, the California Department of Public Health (CDPH) issued its own [update](#) which aligns the state isolation and quarantine timeframes with those of the CDC. A prior Executive Order by Governor Newsom requires the CDPH isolation and quarantine periods be the default rule for the Cal/OSHA ETS exclusion periods and return to work requirements. Therefore, the state's everchanging exclusion and return-to-work periods are changed again, effective immediately, to align with the CDPH isolation and quarantine periods.

The CDPH guidance provides the chart below for determining appropriate isolation and quarantine periods. The CDC provided a similar chart, however the CDPH chart should be followed by California employers because it includes testing requirements that the state requires that are not required by the CDC. Most notably, the isolation period for many employees is reduced to 5 days, IF the employee is asymptomatic or any symptoms have resolved, and has a negative COVID-19 test with a specimen drawn on or after the 5<sup>th</sup> day.

The CDPH and CDC guidelines have also introduced a new provision based on the employee's status as fully vaccinated and their status as to a booster. Thus, employees who are fully vaccinated and remain asymptomatic following close contact with a positive individual, who were previously exempt from exclusion under the Cal/OSHA ETS, must now stay home for at least 5 days as indicated below, unless they have received their booster or are not "booster-eligible." Booster-eligible is described as 6 months after the second dose of Moderna or Pfizer-BioNTech; 2 months after one dose of Johnson and Johnson/Janssen; or 6 months after getting all recommended doses of any combination of FDA-approved, FDA-authorized, or World Health Organization emergency use listed Covid-19 vaccination.

Persons Who Test Positive for COVID-19 (Isolation)	Recommended Action
<p>Everyone, regardless of vaccination status, previous infection or lack of symptoms.</p>	<ul style="list-style-type: none"> <li>• <b>Stay home</b> for at least 5 days.</li> <li>• Isolation can end after day 5 if symptoms are not present or are resolving <b>and</b> a diagnostic specimen* collected on day 5 or later tests negative.</li> <li>• If unable to test or choosing not to test, and symptoms are not present or are resolving, isolation can end after day 10.</li> <li>• If fever is present, isolation should be continued until fever resolves.</li> <li>• If symptoms, other than fever, are not resolving continue to isolate until symptoms are resolving or until after day 10.</li> <li>• Wear a well-fitting mask around others for a total of 10 days, especially in indoor settings.</li> </ul> <p>*Antigen test preferred.</p>
Persons Who are Exposed to Someone with COVID-19 (Quarantine)	Recommended Action
<ul style="list-style-type: none"> <li>• Unvaccinated**;</li> <li>• OR</li> <li>• Vaccinated and booster-eligible** but have <b>not</b> yet received their booster dose.</li> </ul> <p>**Includes persons previously infected with SARS-CoV-2, including within the last 90 days.</p>	<ul style="list-style-type: none"> <li>• <b>Stay home</b> for at least 5 days, after your last contact with a person who has COVID-19.</li> <li>• Test on day 5.</li> <li>• Quarantine can end after day 5 if symptoms are not present <b>and</b> a diagnostic specimen collected on day 5 or later tests negative.</li> <li>• If unable to test or choosing not to test, and symptoms are not present, quarantine can end after day 10.</li> <li>• Wear a well-fitting mask around others for a total of 10 days, especially in indoor settings.</li> <li>• If testing positive, follow isolation recommendations above.</li> <li>• If symptoms develop, test and stay home.</li> </ul>
Persons Who are Exposed to Someone with COVID-19 (No Quarantine)	Recommended Action

<ul style="list-style-type: none"> <li>• Boosted; OR</li> <li>• Vaccinated, but not yet booster-eligible.</li> </ul>	<ul style="list-style-type: none"> <li>• Test on day 5.</li> <li>• Wear a well-fitting mask around others for 10 days, especially in indoor settings</li> <li>• If testing positive, follow isolation recommendations above.</li> <li>• If symptoms develop, test and stay home.</li> </ul>
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It is important to note that as of the date of this article, employers covered by the highly litigated Fed/OSHA ETS (most relevantly employers with 100 or more employees), which has an upcoming initial compliance deadline of January 10, 2022, must follow more stringent isolation requirements. The Fed/OSHA ETS does not address quarantine periods for exposed employees. However, for isolation periods, the Fed/OSHA ETS incorporates now outdated guidance from February 18, 2021 which requires employees with COVID-19 to isolate until:

- 10 days after their first symptoms or administration of their positive test;
- their symptoms improved, and
- they are fever-free for 24 hours.

Fed/OSHA will hopefully exercise discretion to allow employers to follow the new guidance when inspecting entities rather than issue a citation, meaning Fed/OSHA will hopefully not cite employers who decide to follow the CDC's new guidelines, but there is no such guarantee. Of course, this may all change after the United States Supreme Court hears arguments on enforceability of the Fed/OSHA ETS later this week on January 7, 2022.

### **What This Means for Employers:**

This means that employers may follow the shortened isolation and quarantine periods depending on the vaccination status, status of symptoms and whether exposed or infected. Employers should be updating their COVID-19 Prevention Policies in accordance with the requirements of the revised Cal/OSHA ETS, which is set to take effect January 14, 2022 and should incorporate the changes to the isolation and quarantine periods. Do not hesitate to contact us if you have any questions about implementation of the newly revised isolation and quarantine periods or updating your COVID-19 Prevention Policy.

*The goal of this article is to provide employers with current labor and employment law information. The contents should neither be interpreted as, nor construed as legal advice or opinion. The reader should consult with Barsamian & Moody at (559) 248-2360 for individual responses to questions or concerns regarding any given situation.*