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## CAL OSHA Implements Temporary Emergency Regulations

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The California Occupational Safety and Health Standards Board recently adopted new COVID-19 emergency temporary standards. The temporary standards became effective on November 30, 2020, and expire October 2, 2021. The temporary standards apply to almost all employers and places of employment, with very few exceptions. The exceptions include workplaces where there is only one employee who does not have contact with other people, employees who work from home, and certain emergency workers, such as fire and police, associated with preventing the transmission of the disease. Consequently, there are no exceptions for school districts, cities, counties and special districts, and these agencies must comply with the temporary standards.

Several of the requirements outlined in the temporary standards reiterate federal, state, and local standards already in place. For instance, the temporary standards require face coverings, physical distancing, and cleaning and disinfecting protocols, which many employers have already implemented. But, the temporary standards also implement other requirements such as establishing and maintaining a COVID-19 Prevention Program and following specific procedures for responding to COVID-19 outbreaks in the workplace.

First, employers must implement and maintain an effective written COVID-19 Prevention Program. The written elements of a COVID-19 Prevention Program must include the following: identifying and evaluating COVID-19 hazards in the workplace; investigating and responding to COVID-19 exposures in the workplace; tracking and maintaining records of said exposures; implementing effective policies and procedures to correct unsafe and unhealthy conditions in the workplace; and providing COVID-19 training and instruction. ([Click here](#) for a COVID-19 Prevention Program Outline).

As part of the COVID-19 Prevention Program, employers must provide notice, within one business day, to employees when there is a “COVID-19” case in the workplace. A COVID-19 case is defined as a person who (1) has a positive COVID-19 test, (2) is subject to COVID-19 related isolation order, or (3) has died due to COVID-19. The notice requirement is similar to that required in AB 685, which goes into effect on January 1, 2021 (See [2020 Client News Brief Number 76](#)), but has some additional requirements such as notifying employees of available testing. Additionally, employers

must exclude COVID-19 cases from the workplace until certain requirements are met, and must exclude asymptomatic employees with a COVID-19 exposure (defined as being within 6 feet of a COVID-19 positive person for more than 15 minutes, masked or unmasked) from the workplace for 14-days from the date of contact, unless a local health officer or the California Department of Public Health recommends a shorter period of exclusion.<sup>1</sup>

Of note is an additional requirement that for those employees who are quarantined because of a workplace exposure, the employer must:

“continue and maintain an employee’s earnings, seniority, and all other employee rights and benefits, including the employee’s right to their former job status, as if the employee had not been removed from their job.”

Importantly, the temporary standards specify that employers may deduct employee sick leave for this purpose. The requirement of continued pay and benefits does not apply if the employer can demonstrate that the COVID-19 exposure is not work related or if the employee is unable to work because of a reason unrelated to protecting persons at the workplace. However, because COVID-19 exposures are difficult to pinpoint, it is often difficult for employers to meet such burdens. In addition to mandating a 14-day quarantine period for employees exposed at work, the employer must also cover the cost of testing for those exposed employees.

Second, when an employer experiences a multiple COVID-19 case outbreak (three or more COVID-19 cases in an exposed worksite within a 14-day period), or a major outbreak (twenty or more COVID-19 cases in an exposed worksite within a 30-day period), the temporary standards state that the employer must follow specific procedures. For example, employers must notify local public health agencies of the exposure; provide frequent and free testing for employees; make determinations related to halting operations (for major outbreaks only); and take other necessary steps to correct COVID-19 hazards in the workplace.

Overall, the COVID-19 temporary standards establish new requirements for how to respond when there are COVID-19 exposures in the workplace, as well as for record keeping and training. The temporary standards also provide authority to Cal OSHA to enforce these requirements including issuing monetary citations, fines, or shutting down a worksite. Thus, employers should immediately review their current practices and procedures to ensure they are in compliance with the new temporary standards.

If you have any questions about Cal OSHA’s temporary standards, or any other COVID-19 related questions, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located

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<sup>1</sup> Effective December 14, 2020, Executive Order N-84-20 suspended the exclusion periods required in California Code of Regulations, Title 8, section 3205(c)(10) and the periods for which a worker shall not return to work specified in section 3205(c)(11), to the extent they exceed any applicable quarantine or isolation period recommended by the CDPH, or any applicable quarantine or isolation period recommended or ordered by a local health officer who has jurisdiction over the workplace. Pursuant to the CDPH, asymptomatic close contacts may discontinue quarantine after Day 10 from the date of last exposure with or without testing.

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