

Seven Takeaways From Cal/OSHA's New Emergency COVID-19 Regulation

by Erica Haggerty Chen

On the cusp of the holiday season, the California Occupational Safety and Health Standards Board (OSHSB) adopted a comprehensive [COVID-19 emergency regulation](#) addressing a variety of issues related to COVID-19 in the workplace. Importantly, it includes a new **paid time off requirement**: employees excluded from work due to COVID-19 exposure must continue to be paid while they are off work.

This new standard could go into effect as early as **November 29** (codified in Section 3205 of California's Code of Regulations) and will be binding and enforceable against all California employers with limited exceptions, including employees working from home, and workplaces already covered by the Aerosol Transmissible Diseases standard. Cal/OSHA is submitting the new COVID-19 prevention standard to the Office of Administrative Law (OAL), which has ten days to review and approve the regulation. The emergency regulation will last 180 days and may be renewed beyond that time.

Takeaways for Employers

1. Have a Plan. Employers are required to have a written "COVID-19 Prevention Program," which can be incorporated into their Injury and Illness Prevention Plan (IIPP) or through a standalone policy. The required elements include identification and evaluation of COVID-19 hazards, physical distancing, face coverings, recordkeeping and reporting. While many California workplaces have already implemented COVID-19 plans to comply with requirements to reopen, it is important for employers to take the time to consider existing plans to ensure compliance.

2. Handling Exposure and Outbreaks. Employers must give notice of potential exposure to COVID-19 within **one business day** to all employees who may have been exposed, their authorized representatives, independent contractors and other employers present during the high-risk exposure period (beginning 48 hours before the onset of symptoms).

Employers must report a COVID-19 outbreak (three or more COVID-19 cases occurring within a two-week period) at a worksite to the local health department **within 48 hours**,

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including the total number of cases and the hospitalization and/or fatality status. Employers must also follow outbreak testing requirements including providing employer-covered COVID-19 testing to all employees at the exposed workplace.

Employers must report any COVID-19 related serious illnesses or deaths that occur in the workplace or in connection with employment. Employers must also keep a record of and track 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.

3. New Paid Time Off Requirement. The emergency regulation requires that employees with COVID-19 exposure be excluded from the worksite for 14 days after the last known exposure until they satisfy certain return-to-work criteria. Significantly, such employees must **continue to be paid** while they are off work due to work-related COVID-19 exposure. It does not apply if the employer can demonstrate that the COVID-19 exposure was not work related or the employee is unable to work for reasons other than preventing COVID-19 transmission. Employers may use employer-provided employee sick leave benefits for this purpose and according to the standard, "consider benefit payments from public sources in determining how to maintain earnings, rights and benefits, where permitted by law and when not covered by workers' compensation." The requirement does not appear to be limited to one occurrence; thus, an employee who is excluded from the worksite multiple times must be paid each time.

4. Returning to Work. The emergency standard also sets forth the criteria that must be satisfied before COVID-19 cases can return to work. Significantly, the emergency standard provides that a negative COVID-19 test shall not be required for an employee to return to work. Employee COVID-19 cases with symptoms cannot return to work until at least:

- 24 hours have passed since a fever of 100.4+ has resolved;
- COVID-19 symptoms have improved; and
- 10 days have passed since symptoms first appeared.

Employee COVID-19 cases who tested positive but are asymptomatic cannot return to work until a minimum of 10 days have passed since the date of specimen collection of their first positive COVID-19 test.

If a public health authority issues the order to isolate or quarantine, the employee shall not return to work until either period of isolation or quarantine is lifted, or if no period is specified, 10 days from the time the order to isolate was effective, or 14 days from the time the order to quarantine was effective.

5. Social Distancing, Face Coverings and PPE. Employers are required to comply with social distancing standards, including the requirement that employees shall be separated by at least six feet. If an employer can demonstrate that six feet is not possible, it must install "cleanable solid partitions" to reduce transmission.

Employers are required to provide face coverings and ensure they are worn by employees when indoors or outdoors where employees are less than six feet apart. Employers are also required to evaluate the need for personal protective equipment including gloves, face shields and goggles and provide such equipment as needed.

Employers must inform their employees and their authorized employee representatives of COVID-19 cleaning and disinfection protocols.

6. Testing Requirements. Employers must offer free COVID-19 testing during work hours where there is one or more COVID-19 case in the workplace to all employees potentially exposed in the workplace. Where testing is required, employers must inform employees of the reason for the COVID-19 test and the possible consequences of a positive test.

7. Employer-Provided Transportation and Housing. Employers who provide housing for employees are required to follow certain safety standards including ensuring units are cleaned once a day, ensuring sufficient space to permit social distancing, and isolating employees exposed to COVID-19. Employers who provide transportation must screen employees before boarding, ensure employees sit at least three feet apart and wear face coverings.