

California to Ease Employer COVID-19 Notification Requirements and Adopt New Emergency Temporary Standards

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The California Governor has approved [AB 2693](#), extending and modifying employer COVID-19 notification requirements.

In September 2020, as a response to the COVID-19 pandemic, the California Legislature enacted [AB 685](#) (adding [Labor Code section 6409.6](#)), mandating employers notify employees and local and state public health officials of COVID-19 cases in the workplace. The statute was set to expire on January 1, 2023, but the Legislature delayed the sunset provision to January 1, 2024.

AB 2693 eases the notification requirements that employers currently must follow. Instead of requiring employers to notify all employees who were on the premises with another individual with COVID-19, employers may, as an alternative, “[p]rominently display in all places where notices to employees concerning workplace rules are customarily posted” a posting that states the following:

1. The dates on which an employee, or employee of a subcontracted employer, with a confirmed case of COVID-19 was on the worksite premises within the infectious period;
2. The location of the exposures, including the department, floor, building, or other area, but the location need not be so specific as to allow individual workers to be identified;
3. Contact information for employees to receive information regarding COVID-19-related benefits;
4. Contact information for employees to receive the cleaning and disinfection plan that the employer is implementing per CDC and Cal/OSHA guidelines.

The posting must be made within one business day of the employer receiving notice of the potential exposure and must remain posted for at least 15 calendar days. If an employer uses a workplace portal for workplace notices, the new COVID-19 notice must be posted on the portal as well. The notice must be in English and, if applicable, another language understood by a majority of the employees.

Notwithstanding the above changes, employers are still required to notify within one business day the exclusive representative, if any, of the employee with a confirmed COVID-19 case and any employees who had close contact with that employee.

In addition to the above notification requirements, Cal/OSHA also is set to adopt modified COVID-19 regulations. Cal/OSHA's COVID-19 Emergency Temporary Standards (ETS), readopted on May 6, 2022, are set to [expire December 31, 2022](#). On September 15, 2022, the Cal/OSHA Standards Board heard proposed modifications to the ETS ([8 C.C.R. § 3205 et seq.](#)). The new regulations may likely be adopted at the December 15, 2022 board meeting.

Notable changes in the [proposed ETS](#) include:

- Definitional changes as to what constitutes “close contact” or “infectious period”;
 - “Close contact” is being revised to match the current California Department of Public Health (“CDPH”) definition (and any future definition):
 - In an indoor space of 400,000 or fewer cubic feet per floor, a close contact is defined as sharing the same indoor airspace as a COVID-19 case for a cumulative total of 15 minutes or more over a 24-hour period during the infectious period, regardless of the use of face coverings; or
 - In indoor spaces of greater than 400,000 cubic feet per floor, a close contact is defined as being within six feet of the COVID-19 case for a cumulative total of 15 minutes or more over a 24-hour period during the COVID-19 case’s infectious period, regardless of the use of face coverings.
 - “Infectious period” is also being revised to match the current CDPH definition (and any future definition):
 - Two days before the date of symptom onset until 10 days have passed after symptoms first appeared, or through day five if testing negative on day five or later and 24 hours have passed with no fever, without the use of fever-reducing medications and symptoms have improved;
 - For asymptomatic cases: two days before the positive specimen collection date through 10 days (or through day five if testing negative on day five or later) after the date on which the specimen for their first positive test for COVID-19 was collected.
- Removal of the exclusion pay provision requiring “employers [to] continue and maintain an employee’s earnings” for employees excluded from the workplace because they had COVID-19 or had close contact;
- Modified COVID-19 notice requirements to align with AB 2693;
- Modified reporting and recordkeeping requirements including:
 - Employers no longer have to report information about workplace COVID-19 cases and outbreaks to their local health department unless the local department regulations

require it;

- Employers no longer have to keep records of close contacts but still must maintain records of COVID-19 cases for two years;
- Major outbreaks (20 or more employees) must be reported to Cal/OSHA.
- Employers must “develop, implement, and maintain” a prevention plan that incorporates at least one of the following:
 - Maximize the supply of outside air except when doing so would be a hazard;
 - Filter circulated air through filters at least as protective as a Minimum Efficiency Reporting Value (MERV)-13 rating filter, or the highest level of filtration efficiency compatible with the existing ventilation; or
 - Use a High Efficiency Particulate Air (HEPA) filtration unit in indoor spaces when ventilation is inadequate.

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