After Several Rounds of Revisions, Updated Cal/OSHA COVID-19 Emergency Temporary Standards Take Effect

Thursday, June 24, 2021

Over the last two months, the California Occupational Safety & Health Standards Board (“Board”) has considered several versions of proposed updates to the emergency temporary COVID-19 standards that were first adopted in November 2020. After much debate over how the standards should be updated to account for the evolving nature of the pandemic, and several halted attempts to revise the standards in May and June 2021, the Board approved the revised emergency standards at its meeting on June 17. Although the standards would typically be subject to review by the Office of Administrative Law (“OAL”), Governor Newsom signed Executive Order N-09-21 waiving the OAL review period so that the revised standards took effect on June 17.

The revised standards ease some of the restrictions and employer requirements present in the November 2020 standards in various ways. Key changes to the standards are described below.
Major Takeaways

Vaccination Allows Relaxed Requirements: Consistent with the latest Centers for Disease Control and Prevention ("CDC") guidance, fully vaccinated employees are no longer required to wear face coverings indoors (except for certain situations during outbreaks and where required by the California Department of Public Health ("CDPH")). The revised standards also remove the physical distancing requirement, aligning with the Governor’s reopening plan. Further, fully-vaccinated employees do not need to be offered testing or excluded from work if they have close contact with a COVID-19 case, unless they have COVID-19 symptoms. To take advantage of these relaxed requirements, however, employers will need to obtain documentation demonstrating their employees’ vaccination status. The documentation requirement can be satisfied by employees’ self-certification of vaccination status, but employers can also choose to require copies of vaccination cards.

Respirators Encouraged for Unvaccinated: Employers should take note that they are now required to provide unvaccinated employees with respirators upon request, for voluntary use, at no cost, as well as information on the respirators’ proper use. Employers are required to encourage unvaccinated employees to use respirators on a voluntary basis.

Effective Immediately, Through September: Because of Governor Newsom’s executive order, the standards took effect on June 17. Employers should revisit their COVID-19 written plans and protocols to ensure compliance with the revisions in the standards. They will remain in effect until September 15, 2021, and the Board will have the option to readopt the standards (potentially with further modification) for one additional 90-day period.

Details on Key Changes

The revised regulation includes a number of key changes:

- **Exposed Group:** The revised standards replace the term “exposed workplace” with “exposed group,” defining it as all employees, with certain limited exceptions, at a work location, working area, or a common area at work where an employee COVID-19 case was present during a high-risk exposure period. This potentially reduces the scope of personnel who would be included in calculating outbreak status, and who would be subject to the additional requirements triggered when that threshold is met.

- **Air Filtration:** Employers are required to review the CDPH’s Interim Guidance for Ventilation, Filtration, and Air Quality in Indoor Environments, and to consider whether the use of portable or mounted High Efficiency Particulate Air ("HEPA") filtration units, or other air cleaning systems, would reduce the risk of COVID-19 transmission.

- **Testing:** Employers are no longer mandated to make COVID-19 testing available to (1) fully vaccinated employees who have had a close contact in the workplace and do not have COVID-19 symptoms, and (2) employees who have had COVID-19, returned to the workplace, and have remained free of symptoms...
for 90 days after the initial onset of symptoms or never developed symptoms or 90 days after their first positive test.

- **Training:** An employer’s COVID-19 training and instruction must now also inform employees of how to participate in the identification and evaluation of COVID-19 hazards, the importance and efficacy of vaccination, information about how to access testing and vaccination information, the employer’s policies for providing respirators and the right of unvaccinated employees to request a respirator for voluntary use, information about proper respirator use when they are provided for voluntary use, and the conditions under which face coverings must be worn at the workplace.

- **Face Coverings:** The revised standards account for high vaccination rates and the decreasing number of new COVID-19 cases by allowing fully vaccinated workers without COVID-19 symptoms to remain maskless indoors as long as employers document employees’ vaccination status. Employers will still be required to provide face coverings to employees who are not fully vaccinated and ensure that they are worn indoors or in vehicles, unless an exception applies.

- **Providing Respirators for Voluntary Use:** Upon employees’ request, employers must provide respirators for voluntary use to all employees who are not fully vaccinated and who are working indoors or in vehicles with more than one person.

- **Physical Distancing and Partitions:** The physical distancing and partition requirements have been removed from the standards.

- **Disinfecting:** While employers must continue to clean areas, materials, and equipment used by a COVID-19 case during the high-risk exposure period, disinfection is only necessary if the area, material, or equipment is indoors and will be used by another employee within 24 hours of the COVID-19 case.

- **Exclusion of COVID-19 Cases and Close Contacts:** The revised standards ease restrictions on employee exclusions from the workplace. A person who has had close contact with a COVID-19 case may return to work if 1) the person who had a close contact never developed symptoms and 10 days have passed since the last known contact; or 2) the person who had close contact and developed symptoms tests negative for COVID-19 after the onset of symptoms, 10 days have passed since the last known contact, and the person has been symptom free for at least 24 hours. Individuals who were fully vaccinated before they became COVID-19 cases and do not have COVID-19 symptoms can return to the workplace immediately. Employees who were fully vaccinated before close contact to a COVID-19 case and do not develop symptoms can also return free from exclusion.

- **Outbreaks:** The new standards no longer include an independent requirement to notify the local health department when three or more COVID-19 cases occur. However, Labor Code Section 6409.6(b) imposes an independent, statutory obligation to report COVID-19 outbreaks (as defined by the California Department of Public Health) to the local health department.
• The revised standards also create several new additional requirements for scenarios where three or more employee COVID-19 cases within an exposed group visited the workplace during their high-risk exposure period at any time during a 14-day period: employees in the exposed group must wear face coverings when indoors, or when outdoors and less than six feet from another, regardless of vaccination status; employers must inform employees within the exposed group of their right to request a respirator for voluntary use if they are not fully vaccinated; employers must evaluate whether to implement physical distancing of at least six feet or use of partitions to reduce COVID-19 transmission; and employers must consider whether portable or mounted HEPA filtration units or other air cleaning systems would assist in reducing the risk of COVID-19 transmission and, if so, implement their use to the degree feasible. Buildings or structures with mechanical ventilations must have high efficiency filters with Minimum Efficiency Reporting Value (“MERV”) of 13 or higher.

• When a major outbreak occurs (20 or more cases in 30 days), employers are required to take several additional steps: make COVID-19 testing available to all employees in the exposed group regardless of vaccination status; provide respirators for voluntary use to employees in the exposed group; implement physical distancing for employees in the exposed group who are not wearing respirators; and install partitions at fixed stations where physical distancing cannot be maintained at all times.

The revised standards also include new additional requirements applicable to employer-provided housing and transportation.

This alert was prepared with the assistance of Clirae Bourke.

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