On June 8, 2022, the California Department of Public Health (CDPH) issued an Order with definitions for “close contact” and “infectious period” that conflict and abrogate the definitions for these terms within the California Division of Occupational Safety and Health’s (Cal/OSHA) current COVID-19 Emergency Temporary Standards (ETS). Employers must comply with the new CDPH definitions, even where they differ from the text of the California ETS or federal Centers for Disease Control guidance.
Close Contact

The revised CDPH guidance greatly expands the definition of close contact and eliminate the six feet rule that has been the governing standard through most of the COVID-19 pandemic. As a result, many more employees may qualify as close contacts if persons who later test positive for COVID-19 are present in the workplace.

The ETS, effective since May 6, 2022, initially included the six feet rule in its definition of “close contact”:

[B]eing within six feet of a COVID-19 case for a cumulative total of 15 minutes or greater in any 24-hour period within or overlapping with the infectious period defined by this section, regardless of the use of face coverings, unless close contact is defined by regulation or order of the CDPH. If so, the CDPH definition shall apply. Title 8 California Code of Regulations § 3205(b)(1) (emphasis added). This matches the federal CDC definition, which also includes the six feet rule. The ETS also provided an exception to this definition for employees that wore a respirator “whenever they were within six feet of the COVID-19 case during the infectious period.”

In the CDPH’s June 8 Order, it has now defined “close contact” to mean:

[S]omeone sharing the same indoor airspace (e.g., home, clinic waiting room, airplane etc.) for a cumulative total of 15 minutes or more over a 24-hour period (for example, three individual 5-minute exposures for a total of 15 minutes) during an infected person’s (laboratory-confirmed or a clinical diagnosis) infectious period.

This definition greatly expands the scope of “close contact,” from “within six feet” to “same indoor airspace,” likely increasing the number of employees required to isolate or quarantine in the event of a workplace COVID-19 exposure. On July 25, 2022, CalOSHA released an updated FAQ addressing how to determine a “same indoor airspace” and took a broad view. The guidance says that “larger indoor settings that are not divided into smaller spaces that are separated by floor-to-ceiling walls may constituted a shared indoor airspace” and provided examples of open-floor-plan offices, warehouses and retail stores. In such settings, the guidance instructs employers to evaluate “whether employees shared the same indoor airspace on a case-by-case basis” considering factors like the duration and proximity of contact. Thus, the guidance seems to suggest that unless employees are separated by walls, employers must analyze potential close contacts even for large work settings like office building or warehouse floors.

Infectious Period

Cal/OSHA’s current ETS provides the following two-part definition for “infectious period”:

For COVID-19 cases who develop COVID-19 symptoms, from two days before they first develop symptoms until all of the following are true: it has been 10 days since symptoms first appeared; 24 hours have passed with no fever, without the use of
fever-reducing medications; and symptoms have improved.

For COVID-19 cases who never develop COVID-19 symptoms, from two days before until 10 days after the specimen for their first positive test for COVID-19 was collected.

Title 8 California Code of Regulations § 3205(b)(9) (emphasis added). However, similar to the definition for “close contact,” this ETS definition defers to the CDPH, noting in its preface that “the CDPH definition shall apply” if one is established for “infectious period.”

The CDPH has now defined “infectious period”:

For symptomatic infected persons, 2 days before the infected person had any symptoms through Day 10 after symptoms first appeared (or through Days 5-10 if testing negative on Day 5 or later), and 24 hours have passed with no fever, without the use of fever-reducing medications, and symptoms have improved, OR

For asymptomatic infected persons, 2 days before the positive specimen collection date through Day 10 after positive specimen collection date (or through Days 5-10 if testing negative on Day 5 or later) after specimen collection date for their first positive COVID-19 test.

Under this new definition, infected persons who test negative on or after Day 5 are no longer considered to be within their “infectious period” for a full 10 day period, but should wear a well-fitting face mask through to Day 10. The reduced infectious period timeline can affect both quarantine requirements and the need to conduct close contact analysis under the California ETS.

As the above definitions in the recent CDPH order directly affect requirements under the ETS, California employers should review their policies to ensure compliance with the ETS in light of the new definitions. Particular attention should also continue to be paid to new public health orders from the CDPH given their likely effect on employer compliance with the current ETS.

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