



What You Need to Know About Cal/OSHA's New COVID-19 Prevention Standards

01.08.2021 | By [Veronica M. Gray](#), [John T. Kennedy](#)

On November 30, 2020, Cal/OSHA implemented new emergency temporary standards (“ETS”) to prevent the spread of COVID-19.

The ETS apply to all California employees except to those (1) employees who are already covered under Cal/OSHA's Aerosol Transmissible Diseases standard, (2) employees who are working from home and (3) single-employee employers who do not have contact with others.

Non-compliance can result in a fine, with the maximum penalty for regulatory or general violations being \$13,277, the maximum for serious violations being \$25,000 and the maximum for repeat or willful violations being \$132,765. See California Code of Regulations Title 8, Section 336.

The ETS require employers to take certain steps including, but not limited to:

- Developing and implementing a written COVID-19 Prevention Program or ensuring its elements are already present in an existing Injury and Illness Prevention Program (Cal/OSHA has posted a model COVID-19 Prevention Program);
- Investigating and responding to COVID-19 cases in the workplace;
- Requiring employee training;
- Requiring physical distancing, mask wearing, cleaning and disinfecting;
- Following the reporting, recordkeeping and access requirements;
- Excluding employees who have tested positive or been exposed to COVID-19;
- Providing employer-provided housing protocols;
- Providing transportation protocols; and

- Knowing what to do if there have been multiple COVID-19 positive tests in the workplace.

Specific Requirements of the ETS:

- Within one business day, employers must notify all employees, independent contractors and vendors who may have been exposed to COVID-19 at the workplace.
- Employers must offer COVID-19 testing “at **no cost** to employees during their working hours and to all employees who had potential COVID-19 exposure in the workplace.”
- Employers must immediately investigate COVID-19 cases to determine whether they have an exposed workplace, an outbreak, a major outbreak or a non-outbreak setting and respond according to the ETS requirements for each situation.
- Employers must evaluate how to maximize the quantity of outdoor air and whether it is possible to increase filtration efficiency.
- Employers must conduct periodic inspections to ensure compliance with the ETS.
- Employers must inform their employees of the importance of not coming to work and obtaining a COVID-19 test if the employee has COVID-19 symptoms.
- Employers must keep a record of and track all COVID-19 cases.
- Employers shall provide face coverings and ensure they are worn by employees over the nose and mouth with the following exceptions:
 - Employees exempted from wearing face coverings due to a disability shall wear an effective non-restrictive alternative, if their condition or disability permits; and
 - Any employee not wearing a face covering or other effective alternative, for any reason, shall be at least six feet apart from all other persons, unless the unmasked employee is tested at least twice weekly. However, employers may not use COVID-19 testing as an alternative to face coverings when face coverings are otherwise required.
- The ETS mandates that when employees are excluded from work for certain COVID-19 related reasons, “employers shall 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.” Although an employer may require exhaustion of statutorily required paid sick leave, the ETS removes any cap. Employers do not have to follow these obligations if they establish that the employee’s exposure was not work related. This will be a challenging burden.
- Employees who have not been excluded or isolated by any local health department (“LHD”) need not be excluded by the employer if they are temporarily reassigned to work where they do not have contact with other persons.
- Employers may not require a negative test before an employee can return to work from isolation or quarantine.
- **CAVEAT:** Governor Newsom issued an executive order (“EO”) on December 14, 2020 to reflect a change in the California Department of Public Health’s (CDPH) guidance regarding the recommended length of quarantine for individuals exposed to COVID-19. The revised CDPH guidance is inconsistent with the requirements of the ETS. In essence, the quarantine period for asymptomatic employees may be reduced to 10 days generally and 7 days for a narrow category of specified critical infrastructure workers, who may not be excluded from the workplace for a longer period **unless** an applicable LHD order requires a greater period of quarantine/exclusion. Thus, employers need to review their COVID Prevention Plan and related practices to ensure that they comply with the EO as well as their LHD quarantine requirements.

If there is a positive COVID-19 case at the worksite, employers must:

- Determine the day and time the COVID-19 case was last present;
- Determine who may have had been exposed;

- Give notice of the potential COVID-19 exposure, within one business day, in a way that does not reveal any personal identifying information, to all employees, independent contractors and vendors who may have been exposed to the positive COVID-19 case; and
- Investigate whether any workplace conditions could have contributed to the risk of COVID-19 exposure and what could be done to reduce exposure to COVID-19 hazards.

If there are three or more COVID-19 cases within a 14-day period, employers must comply with the following additional requirements:

- Immediately test potentially exposed employees and test them again one week later;
- Provide continuous weekly tests to employees who remain at the workplace after the first two initial tests; and
- Contact the applicable LHD immediately, but no longer than 48 hours after the employer knows, or with diligent inquiry would have known, of the three or more COVID-19 cases.

If there are twenty or more COVID-19 cases within a 30-day period, employers must comply with the following additional requirements:

- Provide COVID-19 testing to all employees twice a week;
- In buildings or structures with mechanical ventilation, filter recirculated air with minimum efficiency reporting value (“MERV”) 13 or higher efficiency filters if compatible with the ventilation system;
- If MERV-13 or higher filters are not compatible with the ventilation system, use filters with the highest compatible filtering efficiency; and
- Evaluate whether portable or mounted high efficiency particulate air (HEPA) filtration units or other air cleaning systems would reduce the risk of transmission and implement their use to the highest degree feasible.

If employers provide housing, they must do the following:

- Ensure that shared housing unit assignments are prioritized in the following order:
 - Residents who usually maintain a household together outside of work, such as family members, shall be housed in the same housing unit without other persons;
 - Residents who work in the same crew or work together at the same worksite shall be housed in the same housing unit without other persons;
 - Employees who do not usually maintain a common household, work crew or worksite shall be housed in the same housing unit only when no other housing alternatives are possible;
- Ensure that housing units, kitchens, bathrooms and common areas are effectively cleaned and disinfected at least once a day in a manner that protects the privacy of residents; and
- Ensure that unwashed dishes, drinking glasses, cups, eating utensils and similar items are not shared.

If employers provide transportation, they must do the following:

- Prioritize shared transportation assignments in the following order:
 - Employees residing in the same housing unit shall be transported in the same vehicle;
 - Employees working in the same crew or worksite shall be transported in the same vehicle;
 - Employees who do not share the same household, work crew or worksite shall be transported in the same vehicle only when no other transportation alternatives are possible;
- Ensure that the driver and all passengers are separated by at least three feet in all directions;
- Ensure that the driver and all passengers are provided with and wear a face coverings;

- Ensure that all high-contact surfaces are cleaned and disinfected before each trip and in between drivers; and
- Ensure that the vehicle has a cabin air filter and that the U.S. EPA Air Quality Index for any pollutant is greater than 100.

Cal/OSHA has posted FAQs and a one-page fact sheet on the regulations, as well as the above referenced model COVID-19 prevention program that will assist employers in navigating the ETS.

It is anticipated that Cal/OSHA may modify the ETS or continue to provide additional guidance. It is recommended that employers continue to monitor Cal/OSHA's website for updates.