

Summary of Cal/OSHA Revised Emergency Temporary Standards for COVID-19 Protection

On June 17, 2021, CalOSHA voted to approve proposed revisions to the COVID-19 Emergency Temporary Standards. The approved revisions are **effective immediately** and are to remain in effect **through January 2022**, unless extended or turned into a permanent status.

The emergency actions will apply to all employees and places of employment, with a few exceptions (*the order does not apply to employees working from home, places of employment with one employee who does not have contact with other persons, or employees covered by section 5199.*).

The following are key takeaways of the revisions:

Face Coverings- Employees who are fully vaccinated will no longer need to wear face coverings. However, CDPH guidance still requires face coverings (regardless of vaccination status) in K-12 educational facilities.

Employers must provide face coverings and ensure they are worn by employees who are not fully vaccinated when indoors or in vehicles with others (face coverings are no longer required outdoors, regardless of vaccination status).

Employees can request face coverings from the employer at no cost and can wear them at work, regardless of vaccination status, without fear of retaliation.

Physical Distancing- No physical distancing or barrier requirements regardless of employee vaccination status, with a few exceptions:

Employers must “evaluate” whether it is necessary to implement physical distancing and barriers during an outbreak.

Employers must implement physical distancing and barriers during a major outbreak • Nothing prohibits employers from voluntarily maintaining physical distancing and barriers.

Respirators- An employer must provide respirators to unvaccinated employees upon request and at any time an employee communicates to the employer their desire to wear one.

Initially, an employer may either stock respirators and offer them to employees or may poll workers to determine which employees wish to be provided a respirator before obtaining them. However, once an employer has established that it has employees who wish to wear respirators, the employer should have enough on hand of the correct size and type to fulfill reasonably foreseeable requests upon demand.

In a “major outbreak” must be offered for voluntary use to all employees in the exposed group (regardless of vaccination status).

For voluntary use, the need to replace a respirator varies with use and environment. Filtering facepiece respirators are disposable respirators that cannot be cleaned or disinfected. They must be replaced if they get damaged, deformed, dirty, or difficult to breathe through. A best practice is to replace filtering facepiece respirators at the

beginning of each shift. The CDC recommends replacing a disposable filtering facepiece respirator, such as an N95, after it has been taken on and off five times. Filtering facepiece respirators may not fit correctly after repeated use.

Please note that only NIOSH- approved N-95's are acceptable. The KN-95 is not an acceptable alternative.

Respirator training must include the employer's policies for providing respirators; the right of employees who are not fully vaccinated to request respirators; how to properly wear the respirator provided; how to perform a seal check each time the respirator is worn and the fact that facial hair interferes with a seal; and a signed Employee Acknowledgement of Receipt of Title 8ccr § 5144 Appendix D.

Documentation of Vaccination Status- Employers may inquire about vaccination status and instruct employees not to disclose any additional medical or other family medical information and must maintain this information as confidential. Covered employers must also provide notice pursuant to the California Consumer Privacy Act (CCPA). Acceptable documentation includes: employee- provided proof of vaccination (vaccine card, image of vaccine card or healthcare document showing vaccination status) and employer maintains a copy; or employee provides proof of vaccination- the employer maintains a record of the employees who presented proof, but not the vaccine record itself; or employees self-attest to vaccination status and the employer maintains a written record of who self-attests.

Should an employee decline or refuse to disclose their vaccination status, the employer must treat the employee as unvaccinated and must not take disciplinary or discriminatory action against an employee.

Exclusion of Employees- Close Contacts must be excluded unless: fully vaccinated before the close contact and have no symptoms; or were previously COVID-19 cases who returned to work and have remained symptom free for 90 days after initial onset of symptoms or after first positive test if never developed symptoms ("natural immunity").

Notification of Exposure to COVID-19 Requirements- Notification of exposure to COVID-19 must be "written"; must be provided to "all employees at the worksite during the high- risk exposure period" (as opposed to all employees who "may" have been exposed); and may include personal service, email or text message if it can reasonably be anticipated to be received by the employee within one business day.

If the employer should reasonably know that an employee has not received the notice, or has limited literacy in the language used in the notice, the employer shall provide verbal notice, as soon as practicable, in a language understandable by the employee.

Exclusion Pay- Exclusion pay wages are subject to "existing wage payment obligations". Unpaid exclusion pay wages are subject to enforcement through "procedures available in existing law" and must be paid at the employee's "regular rate of pay" no later than the regular pay date for the pay period(s) in which the employee is excluded.

The amended ETS eliminates the previous requirement that an employee must be otherwise able and available to work and eliminates the exemption that the employer does not need to provide exclusion pay for any period of time where the employee is unable to work for reasons other than protecting persons" from COVID-19 transmission.

Testing of Non- Vaccinated Employees- Employers must make testing available at no cost to employees with COVID-19 symptoms who are not fully vaccinated during employees' paid time.

Testing Following COVID-19 Cases in the Workplace- The amended ETS provides that testing must be made available to all employees who had "close contact" (as opposed to all employees who had "potential COVID-19 exposure"), and do not need to provide testing to: 1) Employees who were fully vaccinated before the close contact and do not have COVID-19 symptoms; or 2) Employees who were previously a COVID-19 case, met the return-to-work criteria and have remained symptom free for 90 days after initial onset of symptoms or after first positive test if never developed symptoms ("natural immunity").

“Regular Outbreaks” (defined as 3 cases within 14 days)- Requires that employees in the exposed group must wear face coverings and must be notified of their right to request a respirator. Employers must evaluate the use of physical distancing or barriers and use MERV-13 or higher filters if compatible. Testing is not required to employees who were fully vaccinated before the outbreak, or were COVID-19 cases in prior 90 days.

“Major Outbreaks” (defined as 20 cases within 30 days)- The amended ETS clarifies that all of the requirements of “regular” outbreaks apply, with the addition of the following:

- Testing must be provided regardless of vaccination status
- Must provide a respirator for voluntary use and determine need for a respiratory protection program
- Must implement physical distancing
- Must install barriers at workstations where physical distancing is not maintained at all times
- “Major” Outbreak ends when there are fewer than 3 cases in the exposed group in a 14-day period (as opposed to no new cases)

Definition Changes:

“Close Contact” replaces “COVID-19 exposure.

“Exposed Group” replaces “exposed workplace” which excludes workers who are not present at the same time, have no overlap in the workplace, or momentarily pass through a work area.

“Face Coverings” excludes scarf, ski mask, balaclava, bandana, turtleneck, collar, or single layer of fabric.

“Respirators” are a device approved by NIOSH to protect to wearer from particulate matter, such as an N95 filtering facepiece respirator.

“Fully Vaccinated” is defined as an employee (who at least 14 days prior) received the full-dose of the vaccine (either two-dose or single dose). This now includes that for employees vaccinated outside of United States, the vaccine must be listed for emergency use by the World Health Organization (WHO)

Key Original ETS Provisions That Remain in Effect:

Employers must establish, implement, and maintain an effective WCPP.

Symptom screening must continue.

Employers must provide training and instruction to employees on how COVID-19 is spread, infection prevention techniques, and information regarding COVID-19-related benefits that affected employees may be entitled to under applicable federal, state, or local laws.

Employers must exclude employees who have COVID-19 symptoms and/or are not fully vaccinated and have had a close contact from the workplace and, if that close contact is work-related, ensure continued wages.