

California OSHA Implements COVID-19 Workplace Rules

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Effective November 30, 2020, Cal/OSHA approved new [regulations](#) impacting employers' obligations to prevent workplace exposure to COVID-19 and stop outbreaks. The rules apply to all employers regardless of size unless there is only a single employee with no contact to other people, employees working from home and employees covered by the [Aerosol Transmissible Diseases](#) regulation. The California Department of Industrial Relations also issued an [FAQ](#) on December 2, 2020.

In short summary, the standard requires employers to do the following:

- Write and implement a COVID-19 Prevention Program;
- Identify COVID-19 hazards, with input from employees, and correct any hazards identified;
- Engage in contact tracing following any positive case that involved potential workplace exposure, and then notify and provide testing to potentially exposed employees;
- Require physical distancing and mask wearing, improve ventilation, and maximize outdoor air;
- Not allow workers with COVID-19 or at high risk of exposure to return to worksites until their quarantine ends, and pay employees throughout quarantines;
- Report all outbreaks. An outbreak is defined as three or more cases in a 14-day period to the public health department and provide continuous testing as discussed in detail below;
- In employer-provided housing, space beds six feet apart, eliminate the use of bunk beds, and disinfect daily; and,
- In employer-provided transportation, screen workers before boarding, and require them to sit three feet apart in all directions and wear face coverings.

The new rules became effective immediately and the California DIR told employers to work quickly to implement the new standards and that Cal/OSHA would consider employer's good faith efforts in

working toward full compliance but noted that the elimination of hazards and implementing test requirements are “essential.”

Highlights of Employer Obligations

COVID-19 Prevention Plan:

The new rule requires that employers develop a written COVID-19 prevention program to be integrated into the employer’s Injury and Illness Program. This plan must be shared with employees and any applicable unions representing employees. The COVID-19 prevention program must include the following specific elements: (a) a communication system for reporting symptoms/exposure (without fear of reprisal), (b) identification and evaluation of COVID-19 hazards, (c) procedures to investigate/respond to COVID-19 cases in the workplace, (d) correction of COVID-19 hazards, (e) training and instruction to employees about the policies and procedures and ways to avoid COVID-19 infection (e.g., PPE, physical distancing, masks, etc.), (f) requirement of physical distancing of at least six feet unless impossible, (g) face coverings to be worn over nose and mouth, (h) engineering and administrative controls (e.g., barriers, ventilation, sanitation, handwashing, PPE), (i) reporting, recording keeping and access, (j) exclusion of COVID-19 positive employees from the workplace (until return to work criteria are met) and COVID-19 exposed from the workplace until return to work criteria are met, and (k) return to work criteria. As part of this plan, employers must provide free masks and other PPE to all workers.

This plan has significant nuances that may impact certain employers. Specifically, the regulation requires that, for employers who provide housing to workers, space all beds at least six feet apart and, if employers provide transportation, provide at least three feet of space between workers.

The return to work criteria must include that at least 24 hours have passed since a fever of 100.4 or higher has resolved without the use of fever-reducing medications; COVID-19 symptoms have improved; and at least 10 days have passed since COVID-19 symptoms first appeared. For employees who tested positive but never developed COVID-19 symptoms, they are not permitted to work until a minimum of 10 days have passed since the date of specimen collection of their first positive COVID-19 test. Importantly, a negative COVID-19 test **cannot** be required for an employee to return to work.

To determine potential COVID-19 exposure, employers must determine which, if any, employee was within six feet of a COVID-19 case for a cumulative total of 15 minutes within any 24-hour period during the COVID-19 case’s “high risk exposure period.” The high-risk exposure period is:

- For COVID-19 cases who develop COVID-19 symptoms, from two days before they first develop symptoms until 10 days after symptoms first appeared, and 24 hours have passed with no fever, without the use of fever-reducing medications, and symptoms have improved.
- For persons who test positive but 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.

Response to Multiple Infections or “Major Outbreaks”

Multiple Infections:

Additionally, there are specific requirements for multiple infections and/or a major outbreaks. A “multiple infection” or an outbreak exists when an employer has three or more infections in 14 days until there are no new cases for a 14-day period. The infection count includes non-employees who were in the workplace. In the event of multiple infections/outbreak, employers are required to provide COVID-19 testing to all employees (at no cost and during working time) present during the outbreak. This testing must also be provided in a manner to ensure confidentiality.

Specifically, employees should be tested upon identification of the outbreak and then again one week later. After the first two COVID-19 tests, provide continuous COVID-19 testing of employees who remain at the workplace at least once per week, or more frequently if recommended by the local health department, until there are no new cases for a 14-day period.

Employers must also investigate immediately and determine what, if any, possible workplace related factors contributed to the outbreak and document both the review and steps taken to mitigate the issues including (1) leave policies and practices and whether employees are discouraged from remaining home when sick; (2) COVID-19 testing policies; (3) insufficient outdoor air; (4) insufficient air filtration; and (5) lack of physical distancing. This review must be done every 30 days until the outbreak ends. Employers should also make changes to reduce the transmission of COVID-19. Employers are advised to document all compliance efforts in writing in anticipation of a possible Cal/OSHA or other agency inspection.

Finally, immediately (but no longer than 48 hours after knowing of three or more COVID-19 cases), employers must notify the local health department of the total number of COVID-19 cases and for each COVID-19 case, the name, contact information, occupation, workplace location, business address, the hospitalization and/or fatality status, and NAICS Code, and any other information requested by the local health department.

Major Outbreaks:

Employers have enhanced obligations in the event of a “major outbreak” of COVID-19 cases. A major outbreak is defined as 20 or more cases in an exposed workplace in 30 days until there are no new cases for 14 days. In this instance, the employer must provide twice a week COVID-19 testing (at no cost and during working hours), or more frequently if recommended by the local health department to all employees present at the exposed workplace during the relevant 30-day period(s) and who remain at the workplace.

Employers must also conduct the same investigation but are also required to evaluate the ventilation and air quality, and potentially filter recirculated air with Minimum Efficiency Reporting Value (MERV) 13 or higher efficiency filters if compatible with the ventilation system, or if not compatible, whatever the highest compatible filtering efficiency is possible. Employers should also evaluate whether to halt some or all operations at the workplace until the hazards identified have been corrected. As with multiple infections, employers must notify the local health department.

For infections and outbreaks, employers should consider the exposed workplace to be the work location, working areas or common areas used or accessed by a COVID-19 case during the employee’s high-risk period. This includes bathrooms, hallways, break/eating areas and waiting areas. This “exposed workplace” does not change after AB 685 goes into effect on January 1, 2021.

Pay for Employees Excluded from Work due to COVID-19 Exposure

If the employee is able and available to work, then under these rules, the employer must continue to pay the employee and maintain the employee's benefits **if** the employee's exposure is work-related and the employee cannot be reassigned to work that does not involve contact with other workers. An employer may require the employee to use available paid sick leave before providing "exclusion" pay and may offset payments by the amount that the employee receives in other benefits, such as, worker's compensation.

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