

Cal/OSHA Extends COVID-19 Regulations Through December 2022

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California's [Third Readopted COVID-19 Emergency Temporary Standard](#) (ETS) is now in effect and will remain effective until December 31, 2022. This latest iteration of the ETS remains substantively similar to earlier versions; however, several important changes are included. Employers should be aware of the following changes:

Vaccination Status No Longer Relevant Factor

The new ETS no longer distinguishes between vaccinated and unvaccinated individuals. In practice, this will allow for employers to apply uniform precautions to protect the health of their employees. For example:

- Employers are no longer required to ensure unvaccinated individuals wear and are provided with masks indoors;
- In instances where employers are required to make testing available, the testing must be made available to all employees regardless of vaccination status;
- The requirements for employer-provided transportation no longer include an exemption for vehicles in which all employees are fully vaccinated; and
- Employers are required to provide respirators upon request to any employees, not just the unvaccinated.

Definitions Made Consistent with CDPH Guidelines

California's Department of Public Health's (CDPH's) definitions and guidelines for face coverings, isolation and quarantine will now apply to Cal/OSHA regulations. Notably, the adoption of CDPH's "face covering" definition eliminates the controversial addition to the last readoption, which had required that mask fabrics "not let light pass through when held up to a light source." In addition, the

new ETS uses the term “infectious period” rather than “high-risk exposure period” to better align with CDPH guidelines. There is no substantive distinction between the definitions of the two terms under the current guidance of either agency. Finally, the exclusion criteria for “close contacts” has been eliminated, deferring instead to CDPH guidance.

Cleaning, Disinfecting, and Distancing Procedures Reduced or Eliminated

Cleaning and disinfecting requirements have been removed from the ETS. In addition, the ETS no longer requires employers to consider the use of barriers or partitions, and eliminates requirements for physical distancing except for exposed employees during periods of outbreak.

COVID-19 Testing Requirements

The ETS has been revised to allow for the use of self-administered and self-read COVID-19 tests when accompanied by another method of independent verification, such as a time stamped photograph. Employers are also obligated to make testing available in more circumstances.

In addition, in a “major outbreak” setting, twice-weekly testing is now “required of all employees in the exposed group.” This language goes beyond the past requirements, which only required employers to make the testing available. If employees are not tested accordingly, they must be excluded under the return to work criteria starting from the date the outbreak begins.

“Returned Cases” and Return to Work

The return to work criteria have also been revised for consistency with CDPH’s current guidelines. The criteria provide more specificity regarding when an employee may return to work following a positive test:

- Asymptomatic cases, or those whose symptoms are resolving, should not return to work until all three of the following criteria are met: 1) at least 5 days have passed from when their symptoms began, or the date of their first positive test if they are asymptomatic; 2) at least 24 hours have passed since a fever resolved without the use of medicine; and 3) a negative test from a specimen collected on the fifth day or later is obtained, or if unable or unwilling to test, at least 10 days have passed from when symptoms began or date of first positive test.
- Symptomatic cases whose symptoms are not resolving should not return to work until: 1) at least 24 hours have passed since a fever resolved without the use of medicine; and 2) symptoms are resolving or 10 days have passed from when symptoms began.
- Regardless of symptoms, a COVID-19 case should wear a face covering until 10 days have passed since the date that COVID-19 symptoms began or, if asymptomatic, the date of their first positive COVID-19 test.

Cal/OSHA has also created a new category for a “returned case,” defined as a COVID-19 case who returned to work and did not develop any COVID-19 symptoms after returning.

Looking Ahead

Under [Executive Order N-23-21](#), Governor Newsom created an exception from the standard process for emergency regulations (which typically limits emergency temporary standards to two brief readoptions) in order to allow for a third readoption of the ETS, on the condition that the effective period could not extend beyond December 31, 2022. Barring any further executive action altering those limitations, the Third Readoption therefore likely represents the final iteration of the ETS. The CalOSHA Standard Board has continued to discuss potential permanent standards to replace the latest ETS upon its expiration at the end of 2022, though the topic does not appear on future agendas as of this posting.

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