

Cal/OSHA COVID-19 Prevention Non-Emergency Regulations Have Taken Effect as of February 3, 2023

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California employers take note: the non-emergency version of the Cal/OSHA COVID-19 Prevention regulations are now in effect.

At the end of 2022, the Cal/OSHA Standards Board [voted to adopt the COVID-19 Prevention non-emergency regulations to replace the Emergency Temporary Standard\(ETS\)](#).

On February 3, 2023, the California Office of Administrative Law approved the non-emergency standard. Though not titled a temporary standard, the non-emergency standard is set to sunset two years from its effective date, with the exception of the recordkeeping requirements which will expire in three years.

In conjunction with the approval, Cal/OSHA published both [a Frequently Asked Question Page](#) (FAQ) and a [COVID-19 Model Prevention Program](#).

The FAQ covers the following:

- Scope of Coverage
- COVID-19 Prevention Addressed in the Injury and Illness Prevention Program
- Determining Measures to Prevent COVID-19 Transmission; Identifying and Correcting COVID-19 Hazards
- Face Coverings and Personal Protective Equipment
- Ventilation
- Vaccines

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- Training
 - Addressing COVID-19 Cases in the Workplace
 - Testing
 - Outbreaks
 - Recordkeeping and Reporting
 - CDPH Isolation and Quarantine

The FAQs provide some useful information as employers pivot from the ETS requirements.

Hybrid/Remote Employees

The non-emergency regulations apply only when employees work at the workplace or are exposed at work, and not when they work from home. The regulations do not apply to employees who are assigned to telework and who choose to work somewhere other than their home e.g. a hotel or a rental property unless arranged by the employer as employer-provided housing. Additionally, these regulations do not apply to employees who are covered by the Aerosol Transmissible Diseases regulation.

Close Contact Definition

The non-emergency regulations continue to use the [revised definition of “close contact” set forth by the California Department of Public Health \(CDPH\) in October 2022](#).

1. In indoor spaces of 400,000 or fewer cubic feet per floor, a close contact is defined as sharing the same indoor airspace as a COVID-19 case for a cumulative total of 15 minutes or more over a 24-hour period during a COVID-19 case’s infectious period.
2. In large indoor spaces greater than 400,000 cubic feet per floor, a close contact is defined as being within 6 feet of the COVID-19 case for a cumulative total of 15 minutes or more over a 24-hour period during the COVID-19 case’s infectious period.
3. Offices, suites, rooms, waiting areas, break or eating areas, bathrooms, or other spaces that are separated by floor-to-ceiling walls are considered distinct indoor airspaces.

The FAQs also provide a formula for determining the cubic feet of an indoor space.

Face Coverings and Personal Protective Equipment

Under the non-emergency regulations, employers must provide face coverings and ensure they are worn when required by CDPH.

Additionally, all employers must provide and ensure face coverings are worn during outbreaks at the

workplace, as well as ensure the use of face coverings when employees return to work after having COVID-19 or after a close contact.

Testing Requirements

Under the non-emergency regulation, employers must offer testing at no cost and during paid time:

- To employees who had a close contact at work, with an exception for symptom-free employees who recently recovered from COVID-19.
- During an outbreak, to all employees within an exposed group, at least once a week, except for employees who were not at work during the relevant period and symptom-free employees who recently recovered from COVID-19.
- During a major outbreak, twice per week, except for employees who were not at work during the relevant period and symptom-free employees who recently recovered from COVID-19 (returned cases).

Benefits to Excluded Workers

The non-emergency regulation no longer includes an exclusion pay requirement. Though the Standards Board discussed in December holding a vote to amend the regulations to include exclusion pay, that has not proceeded to date and was not indicated for the Board's upcoming meeting on February 16th. The FAQs indicate that employees who test positive may be eligible for other benefits such as state disability.

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