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LEGAL UPDATES

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Services

Labor & Employment
Workplace Safety & Health

Cal/OSHA Revises COVID-19 Emergency Temporary Standards for California Employees

On June 17, 2021, the California Occupational Safety and Health Standards Board (OSHSB) adopted revisions to the COVID-19 Prevention Emergency Temporary Standards (ETS). The revised ETS took effect immediately.

The OSHSB action revises the ETS adopted in November of 2020 and is intended to better align with recent guidance from the California Department of Public Health (CDPH). This latest set of revisions follows several weeks of confusion as OSHSB initially voted on proposed revisions on June 3, 2021. This initial action prompted much controversy as the proposed revisions to the ETS would have required employees to wear face coverings if even one unvaccinated person was present and required employers to stockpile N95 masks. Following public criticism and outcry, the OSHSB met again on June 9, 2021, and voted to withdraw the earlier proposed revisions. During this second meeting, OSHSB was briefed by a representative of the CDPH concerning its newest guidance on masking. Ordinarily, the proposed revisions would go to the state Office of Administrative Law for review and approval within 10 days. However, Governor Gavin Newsom signed an executive order to implement the revised regulations immediately. This latest version will remain effective indefinitely.

The revisions include the following:

Fully vaccinated employees do not need to be offered testing or excluded from work after close contact unless they have COVID-19 symptoms.

Fully vaccinated employees do not need to wear face coverings except for certain situations during outbreaks and in settings where CDPH requires all

persons to wear them. Employers must document the vaccination status of fully vaccinated employees if they do not wear face coverings indoors. Self-attestation is permitted if the employer maintains a record of who self-attests. Employers may also have employees provide proof of vaccination and maintain a copy or maintain a record of employees who presented proof.

Employees are not required to wear face coverings when outdoors regardless of vaccination status except for certain employees during outbreaks.

Employees are explicitly allowed to wear a face covering without fear of retaliation.

Physical distancing requirements have been eliminated except where an employer determines there is a hazard and for certain employees during major outbreaks.

Employers must provide respirators for voluntary use at no cost to employees who are not fully vaccinated upon request. The ETS expressly prohibits retaliation for such requests.

Employer must offer testing to employees who are not fully vaccinated and exhibit COVID-19 symptoms.

Employer-provided housing and transportation are exempt from the regulations where all employees are fully vaccinated.

Employers must review the Interim Guidance for Ventilation, Filtration and Air Quality in Indoor Environments.

Employers must evaluate ventilation systems to maximize outdoor air and increase filtration efficiency, and evaluate the use of additional air-cleaning systems.

While not specifically a revision, employers are required to provide face coverings to unvaccinated workers and ensure they are worn indoors and in vehicles. Employers must communicate to workers that face coverings are recommended for unvaccinated persons outdoors where six feet of physical distancing cannot be maintained. Face coverings must be provided upon request to vaccinated workers. In addition, the revised standards include updated definitions of “close contact,” “face covering” and “fully vaccinated.” For example, a face covering is not a scarf, bandana, turtleneck, collar, ski mask, balaclava or any single-layer fabric. A face covering is defined specifically as a surgical or medical procedure mask, a respirator worn voluntarily or a tightly woven fabric or nonwoven material of at least two layers.

A number of requirements from the November 2020 ETS will remain in place, including:

An effective written COVID-19 Prevention Program.

Providing effective training and instruction to employees on the employer's prevention plan and their rights under the ETS.

Providing notification to public health departments of outbreaks.

Providing notification to employees of exposure and close contacts.

Requirements to offer testing after potential exposures.

Requirements for responding to COVID-19 cases and outbreaks.

Quarantine and exclusion pay requirements.

Basic prevention requirements for employer-provided housing and transportation.

Cal/OSHA has posted an updated fact sheet and frequently asked questions about revisions to the ETS. In addition, Cal/OSHA is currently updating its model COVID-19 Prevention Program in English and Spanish.

Contact us

For further guidance regarding California's new guidance, or related labor and employment questions, contact Amberly Morgan or your Husch Blackwell attorney.

Your Comprehensive COVID-19 Legal Resource

Since the pandemic's onset, Husch Blackwell has continually monitored state-by-state orders regarding capacity, masking, vaccines, and more. We regularly address your FAQs and provide you with easy-to-use COVID-19 tools about returning to work and navigating federal programs. Contact our industry-specific legal teams or your Husch Blackwell attorney to plan through and beyond the pandemic.