

Alert | Labor & Employment/OSHA



December 2020

Update: The Office of Administrative Law Approves Cal-OSHA Emergency COVID-19 Regulations

UPDATE:

On Nov. 30, 2020, the Office of Administrative Law (OAL) approved Cal-OSHA's emergency Coronavirus Disease 2019 (COVID-19) safety regulations (Regulations). Since then, Cal-OSHA has issued a model prevention program and Frequently Asked Questions, [both available here](#), to help employers comply with the Regulations, which are effective as of Nov. 30, 2020. Our previous Alert, which summarizes the Regulations, follows below.

On Nov. 19, 2020, the California Occupational Health & Safety Standards Board unanimously adopted [21 pages](#) of emergency Coronavirus Disease 2019 (COVID-19) safety regulations (Regulations). The Regulations are broad. They apply to all employees and places of employment except: (1) those places of employment with one employee who does not have contact with others; (2) employees working from home; and (3) employees covered by Title 8 of the California Code of Regulations, Section 5199 (e.g., health care facilities, facilities designed to receive persons arriving from a scene of hazardous substances, police services, public health services, labs reasonably anticipated to contain aerosol transmissible pathogens, and any other facility determined by OSHA to require the standards in Section 5199).

The Regulations impose several new requirements, which are briefly summarized below.

First, the Regulations amend existing Section 3205 by adding language that requires employers to: (1) maintain a written COVID-19 training program and (2) maintain a written COVID-19 prevention program with detailed requirements, which can be incorporated into the employer's existing Illness and Injury Prevention Program.

Second, the Regulations create a new emergency Section 3205.1, which applies in the event of multiple COVID-19 infections and/or outbreaks in the workplace. This Section requires employers that have been identified by a local health department as the location of a COVID-19 outbreak or that have had three or more COVID-19 cases reported in their workplace within a 14-day period to: (1) provide COVID-19 testing to exposed employees at no cost to those employees; (2) exclude COVID-19 infected employees from the workplace; (3) investigate and determine workplace-related factors contributing to the COVID-19 infections; (4) review their COVID-19 policies and procedures and implement changes to prevent further spread in the workplace; and (5) notify the local health department.

Third, the Regulations create a new emergency Section 3205.2. This Section applies in the event of a major outbreak in the workplace, defined as when there are 20 or more COVID-19 cases reported in an exposed workplace within a 30-day period. It requires employers to: (1) provide COVID-19 testing at no cost to the employee at least twice a week (or more frequently if recommended by the local health department); (2) correct COVID-19 hazards; and (3) comply with the requirements for multiple COVID-19 infections and outbreaks reported in the workplace (as described above).

Fourth, the Regulations create a new Section 3205.3, which mandates additional requirements for employers who provide housing to their employees. This Section requires employers to implement: (1) prioritized housing assignments; (2) physical distancing requirements; (3) face covering requirements; (4) cleaning and disinfecting procedures; (5) symptom screening procedures; (6) COVID-19 testing requirements; and (7) an isolation process.

Finally, the Regulations create a new Section 3205.4, which contains requirements for employers that provide transportation to and from work. With some exceptions, this Section requires employers to implement: (1) prioritized transportation assignments; (2) physical distancing and face covering requirements in employer provided vehicles; (3) symptom screening procedures; (4) cleaning and disinfecting procedures; (5) ventilation requirements; and (6) hand-hygiene requirements.

The above requirements each contain additional and potentially burdensome sub-components that are beyond the scope of this alert.

Following the OAL's approval, the Regulations went into effect Nov. 30, 2020. It should be noted that there does not appear to be a grace period in which to comply.

Employers may consider the following to prepare for these changes:

- A thorough review of all obligations required and how they apply to particular employment arrangements at each workplace.
- HR and management training in implementation and administration.
- A proper record of compliance.
- Updated policies and Illness and Injury Prevention Programs.

Authors

This GT Alert was prepared by:

- [Lindsay E. Hutner](#) | +1 415.655.1312 | hutnerl@gtlaw.com
- [James M. Nelson](#) | +1 916.442.1111 | nelsonj@gtlaw.com
- [Tayanah C. Miller](#) | +1 415.655.1277 | millerta@gtlaw.com

Albany. Amsterdam. Atlanta. Austin. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany. ~ Houston. Las Vegas. London.* Los Angeles. Mexico City.+ Miami. Milan.» Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. Salt Lake City. San Francisco. Seoul.∞ Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv.^ Tokyo.* Warsaw.~ Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ~Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. *Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. #Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2020 Greenberg Traurig, LLP. All rights reserved.*