

**Alert | Health Emergency Preparedness Task Force:
Business Continuity Amid COVID-19**



December 2021

Cal/OSHA Revises COVID-19 Prevention Emergency Temporary Standards

On Dec. 16, 2021, the California Occupational Safety and Health Standards Board **adopted revisions** to the Cal/OSHA COVID-19 Prevention Emergency Temporary Standards (ETS). The ETS updates amend employer requirements for exclusion from the worksite, return-to-work criteria, outbreaks and testing, and face coverings. The revised provisions go into effect Jan. 14, 2022, and remain in effect until April 14, 2022, at which point a permanent regulation on the topic is expected. Cal/OSHA's original ETS on COVID-19 **went into effect Nov. 30, 2020**, and was previously **extended in June 2021**.

This GT Alert summarizes the significant changes to Cal/OSHA's ETS, which relate to fully vaccinated workers (i.e., workers that are 14 days past the final dose of a vaccine series) who are exposed to COVID-19 infection, including those who are asymptomatic. Despite recent changes to guidance released by the Centers for Disease Control (CDC), California employers must continue to comply with the most restrictive requirements (including the Cal/OSHA ETS and state/local public health orders).

- **Exclusion from the Workplace:** Currently, fully vaccinated employees and employees who recovered from COVID-19 within the prior 90 days who have close contact with a COVID-19 positive person (within six feet for 15 minutes or more in a 24-hour period) but do not show any COVID-19 symptoms do not need to be excluded from the workplace. Under the revised ETS, however, in order not to be excluded, these employees must wear a face covering in the workplace following exposure and maintain physical distancing for 14 days following the last known close contact. Additionally, the

employer must provide the employee with information about any applicable precautions recommended by the California Department of Public Health for persons with close contact.

- **Return to Work Criteria:** Unvaccinated employees who have a close contact with the virus but never develop COVID-19 symptoms may return to work after one of the following three occurrences: (1) 14 days after the last known contact; (2) 10 days after the last known contact, if they wear a face covering and socially distance for 14 days after the close contact; or (3) seven days after the last known close contact, if the person tests negative for COVID-19 using a PCR test taken at least five days after the close contact and if the individual wears a face covering and socially distances from others for 14 days after the close contact. All employees who test positive, regardless of vaccination status, must continue to remain out of the workplace until the following conditions have been satisfied: (1) at least 10 days have passed since the latter of symptom onset or the date of the first positive COVID-19 diagnostic test; (2) at least 24 hours have passed since resolution of fever without the use of fever-reducing medications; and (3) other symptoms have improved.
- **Outbreaks and Testing:** The revised ETS modifies the types of tests that are acceptable. COVID-19 tests cannot be both self-read and self-administered unless in the presence of the employer or a telehealth proctor. This is consistent with federal OSHA's ETS on vaccines and testing. Employers must test even fully vaccinated, asymptomatic employees in an outbreak setting (i.e., at least three COVID-19 positive employees during 14-day period). Employers also are required to provide testing for all close contacts, including asymptomatic, fully vaccinated employees. The testing must be during paid time and at no cost to employees.
- **Face Coverings:** Face coverings may not allow light to pass through (although coverings with clear plastic panels allowing light to pass through will otherwise meet the definition in order to facilitate communication with people with disabilities). If gaiters are worn, they must have two layers of fabric or be folded to make two layers. These updates are consistent with federal OSHA's ETS. The revised ETS also requires that both vaccinated and unvaccinated employees wear face coverings during screenings for employees. If someone with a condition/disability who cannot wear a face mask is also not able to wear a non-restrictive alternative, they must remain six feet apart from others and be either fully vaccinated or tested at least weekly (which is provided at no cost to the employee and during paid time).
- **Notice of Exposure and Clarification of "Worksite":** Under the ETS, notice of potential exposure must be provided to all employees (and their representatives), independent contractors, and other employers who were on premises at the same worksite as the COVID-19 case during the high-risk exposure period (as defined by the regulation). For purposes of providing notice to employees of potential exposure in the workplace, the regulations now clarify that, in addition to locations the COVID-19 case did not enter, the worksite does not include locations where the worker worked by themselves without exposure to other employees, a worker's personal residence, or an alternative work location chosen by the worker when working remotely.

Cal/OSHA's COVID-19 ETS has already survived several legal challenges. The Fed-OSHA equivalent standard on vaccination and testing will be heard before the U.S. Supreme Court on Jan. 7, 2022. It is unclear what impact that decision could have on the Cal/OSHA ETS. Indeed, OSHA-approved State Plans, such as Cal/OSHA, have the ability to issue more stringent standards than Fed-OSHA standards.

Private employers in California and elsewhere are encouraged to review and update their existing COVID-19 Prevention Program and related policies to ensure compliance, or implement policies that meet Cal/OSHA's requirements.

For more information and updates on the developing situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#) and [Business Continuity Amid COVID-19](#) page.

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