

You Should Know

California OSHA Emergency COVID-19 Prevention Rule is Adopted

Effective November 19, 2020



The 21-page standard went in effect on November 19, 2020 and will last until at least October 2, 2021. In the absence of a federal Occupational Safety and Health Administration (OSHA) COVID-19 safety standard for employers, the California Occupational Safety and Health Standards Board recently adopted a [temporary COVID-19 Workplace Safety standard](#). This standard for employers is similar to standards passed by other states such as Virginia, Oregon and Michigan, but includes several other requirements that are more far reaching than those plans that have been introduced in other states. The California plan outlines the required steps that employers who may experience exposure to COVID-19 and are not covered by the existing [Cal/OSHA Aerosol Transmissible Diseases](#) standard (section 5199, which generally applies to healthcare workers).

One of the significant requirements of the California Emergency COVID-19 rule is that it requires employers in the state (not currently covered by the Aerosol Transmissible Disease standard) to develop a written COVID-19 prevention program. The written program must contain elements such as physical distancing practices, engineering and administrative controls, guidance on facemasks and other personal protective equipment (PPE), measures for how to deal with exposed and positive cases, training and employee communications along with the development of return to work protocols. The implementation of such measures should closely follow the process that has been used for years to comply with the Injury and Illness Prevention Plan (IIPP) requirements of California. Part of the process includes conducting a hazard assessment and adopting procedures for investigating and responding to every reported case followed by correcting any hazards that were identified during the process.

California is also the first state to require employers to develop specific plans related to outbreaks in both a “minor” (3 or more cases in 14 days) or a “major” (20 or more cases in 30 days) outbreak classification. These outbreak plans being developed by the employer must include implementing mitigation techniques and required testing components. As part of the requirements for major outbreaks, testing must be provided by the employer at least twice a week (or more if required by the health department). The testing must be provided at no cost to the employee and during working hours. Testing must be provided to all employees who were exposed in the workplace during the prior 30 day period and have continued in the workplace. Employer provided testing as a result of a major outbreak could be costly and getting access to a testing vendor may prove to be difficult for some organizations. Developing a plan early and identifying vendors who may be able to fill this role may be critical in ensuring compliance with this program requirement for some organizations.

The standard requires a written COVID-19 prevention program (CPP) be developed and that the program contains 11 mandatory program elements. Please see the full text of the California [temporary COVID-19 Workplace Safety standard](#).

These 11 required elements are:



1. Establishing a system for communication

Employers must develop employee training related to the hazards of COVID-19 and the steps the employer has taken to help keep them safe. The communication efforts must also include a process for employees to report their symptoms or possible exposure to COVID-19 in the workplace (without fear of reprisals). It must also contain language that will allow for the accommodation of employees with medical or other conditions that may put them at increased risk for the virus. The communication efforts must also include information about access to COVID-19 testing and must also include the process the employer will take when they are required to inform affected employees of the reason for the test being required.



2. Identification and evaluation of COVID-19 hazards in the workplace

This hazard assessment process must include all areas of the operations and must include a process for screening employees and the development of a process related to responding to employees with COVID-19 symptoms. Special attention should be paid to both indoor and outdoor workspaces along with processes and gatherings that could lead to greater potential exposure to the virus. If any previous prevention plans or efforts have been developed or implemented, they need to be reviewed to ensure that they are still acceptable and not in need of additional controls being developed.



3. Investigating and responding to COVID-19 cases

This program element will require an employer to create a process to investigate and respond to any COVID-19 cases in the workplace. This will include procedures for verifying the status of all cases, how they will receive information regarding test results and the onset of symptoms along with the process to properly record all work-related cases. The program element requires that the following basic contact/exposure tracing actions be taken in response to a case:

- Determining the date and time the case was last present and to the extent possible, the date of the positive COVID-19 test/diagnosis along with the first time that any symptoms (if any) were present.
- Determining who may have been exposed to the case of COVID-19.
- Giving a private notification within one business day to the following:
 - All employees who may have had exposure (and their authorized representatives)
 - Any independent contractors or other employers who were present in the workplace or may have had exposure
- For employees who may have had a potential exposure, the employer must offer testing at no cost during work hours.
- The employer must also conduct a post exposure investigation to determine if any workplace conditions could have led to the exposure. Corrective actions should be taken if additional steps to reduce the exposure are identified.



4. Correction of COVID-19 hazards

This involves the implementation of policies and procedures that will correct any hazardous conditions or work practices that may lead to the spread of the virus in the workplace. This process should include a hierarchy of controls including elimination of the hazard/practice, implementing social distancing measures and the required use of masks and other PPE.



5. COVID-19 training

The following topics should be covered in the COVID-19 training materials presented to employees:

- A review of the employer's COVID-19 policies and procedures
- Information related to benefits the employee may be entitled to
- How the COVID-19 virus spreads
- The importance of social distancing of at least six feet and how it should be combined with face coverings
- Information related to the transmissibility of the virus and why social distancing, hand hygiene and face coverings are so important to limit the spread while indoors
- The importance of proper handwashing and handwashing facilities (soap, running water) along with the significant limitations of sanitizer on dirty hands
- The proper use of face coverings along with education on how face coverings should not be considered respiratory protective equipment
- Symptoms of COVID-19 and the importance of not coming to work and obtaining testing if symptoms are present



6. Physical distancing

The standard indicates that all employees must be separated by at least six feet unless where it has been demonstrated to be impossible. A plan to implement separation and changes in work practices to promote separation should be developed as part of this element.



7. Face coverings

The employer must provide face coverings to employees and must ensure that they are worn over the nose and mouth when indoors and when less than six feet apart when outdoors. Face coverings should be clean and undamaged. Face shields are not a replacement for face coverings but may be used in addition to a face covering. Employees may only remove their face coverings when they eat or drink as long as they are at least six feet apart and the outside air supply has been maximized. The element must also include developing signs or audio recordings that will advise nonemployees of the face covering requirements of the site. The element should also include the development of policies and procedures that will help to minimize the exposure to individuals who are not wearing a face covering.



8. Engineering, administrative and PPE controls

These controls should include the following:

- Physical barriers to be installed when six feet of separation is not possible
- Ventilation should be utilized when possible to maximize the quantity of outside air except when the EPA Air Quality Index is greater than 100 or during the presence of extreme heat or cold from the outside air

- Sanitation protocols should be developed that would address the proper and regular cleaning of high touch surfaces along with protocols for the cleaning of areas where COVID-19 positive staff have worked
- Evaluating handwashing facilities and making a determination if additional facilities are needed
- A formal PPE assessment should be conducted to help determine what items are needed to help prevent exposure to the virus



9. Reporting, recordkeeping and access

A process to record and report all cases of COVID-19 in the workplace should be developed with the local health department. In addition to reporting to the health department, employers must continue to immediately report to Cal-OSHA any COVID-19 related serious illnesses or deaths occurring in a workplace or in connection with a workplace exposure to COVID-19. Information related to the occupation, location, date of exposure, last day in the workplace and the date of a positive test must be maintained by the employer. All medical information must be kept confidential and results without personal identifying information must be made available to employees and authorized representatives upon request.



10. Exclusion of COVID-19 cases (employees) from the workplace

If an employee has a positive COVID-19 diagnosis, they must be excluded from the workplace until they meet all of the return to work requirements. This includes the exclusion of employees with exposure in the workplace for at least 14 days after their last known exposure to a COVID-19 case. If the employee is excluded due to a workplace exposure, the employer must continue and maintain the employee's earnings, seniority, and all other rights and benefits of their job status (as if that employee had not been excluded). Employers may use employer provided employee sick leave benefits and may also use funds from public sources to maintain earnings to cover these earnings, rights and benefits when they are not covered by workers compensation.



11. Return to the workplace criteria

COVID-19 cases with COVID-19 symptoms shall not return to the workplace until:

- At least 24 hours have passed since a fever of 100.4 degrees or higher has been resolved without the use of fever reducing medications
- COVID-19 symptoms have improved; and at least 10 days have passed since COVID-19 symptoms first occurred

COVID-19 cases who tested positive but never developed symptoms (asymptomatic) shall not return until a minimum of 10 days have passed since the date the positive COVID-19 test was administered. A negative COVID-19 test shall be required for an employee to return to work if they have met all other criteria.

Cal/OSHA and their rule making process is often seen as a bellwether with workplace safety regulations being developed in California and then later being adopted by other regulatory agencies including federal OSHA. The newly adopted California Temporary COVID-19 Workplace Standard will likely require a significant amount of planning and procedure development for applicable employers. It is important that employers review any existing policies or procedures that they have developed in response to COVID-19 and that they further enhance their past efforts with the development of a written COVID-19 Prevention Plan (CPP).

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Sources

Temporary COVID-19 Workplace Safety standard
Cal/OSHA Aerosol Transmissible Diseases standard



Each applicable policy of insurance must be reviewed to determine the extent, if any, of coverage for COVID-19. Coverage may vary depending on the jurisdiction and circumstances. For global client programs it is critical to consider all local operations and how policies may or may not include COVID-19 coverage. The information contained herein is not intended to constitute legal or other professional advice and should not be relied upon in lieu of consultation with your own legal and/or other professional advisors. Some of the information in this publication may be compiled by third party sources we consider to be reliable, however we do not guarantee and are not responsible for the accuracy of such information. We assume no duty in contract, tort, or otherwise in connection with this publication and expressly disclaim, to the fullest extent permitted by law, any liability in connection with this publication. Willis Towers Watson offers insurance-related services through its appropriately licensed entities in each jurisdiction in which it operates. COVID-19 is a rapidly evolving situation and changes are occurring frequently. Willis Towers Watson does not undertake to update the information included herein after the date of publication. Accordingly, readers should be aware that certain content may have changed since the date of this publication. Please reach out to the author or your Willis Towers Watson contact for more information.

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