

Publications

California Division of Occupational Safety and Health Amends COVID-19 Prevention Emergency Temporary Standards

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The California Division of Occupational Safety and Health, better known as Cal/OSHA, recently changed the COVID-19 Prevention Emergency Temporary Standards (ETS). These changes will go into effect on Tuesday, June 15, and will continue to apply to nearly all California employers. The proposed changes revise several prior proposals, but still distinguish between (and expand upon) vaccinated and unvaccinated employees. The notable revisions are as follows:

- **Physical Distancing Requirements Deleted:** Prior text of the ETS retained physical distancing protocols until July 31, 2021, but the new revisions align with Governor Newsom's reopening guidelines. The prior text of the ETS required employers to provide methods of physical distancing at least six feet, while the revisions merely explain that because virus particles can travel more than six feet, employers should explain to workers that physical distancing, face coverings, increased ventilation, and respiratory protection decrease the spread of COVID-19 when used in combination. The explicit, hard requirement of six feet of physical distancing has been removed from the revisions.
- **Face Coverings for Vaccinated and Unvaccinated Workers:** Prior text of the ETS required that all workers, regardless of vaccination status, wear face coverings when indoors or when closer than six feet to other workers while outdoors. However, the revisions do not require vaccinated workers to wear face coverings. Unvaccinated workers must still wear face coverings when indoors or in vehicles, as before. Employers must provide face coverings and ensure they are worn by workers when required. The face coverings must be worn over the nose and mouth and must be clean and undamaged. The regulations define "face covering" as a surgical mask, medical procedure mask, a respirator worn voluntarily, or a tightly woven fabric or non-woven material of at least two layers.
- **Vaccination Documentation:** The proposed revised text contains a slightly revised definition of "fully vaccinated" which reads as follows:

“Fully vaccinated” means the employer has documented that the person received, at least 14 days prior, either the second dose in a two-dose COVID-19 vaccine series [typically Moderna or Pfizer] or a single-dose COVID-19 vaccine [typically Johnson & Johnson]. Vaccines must be FDA approved; have an emergency use authorization from the FDA; or, for persons fully vaccinated outside the United States, be listed for emergency use by the World Health Organization (WHO).

The inclusion of international vaccines is worth noting, as it is likely to assist employees of international companies to return to the workplace. The revisions do not, however, specify whether an employer must obtain a copy of vaccination card, review the employee’s vaccination card, or rely on self-certification forms. Cal/OSHA is likely to issue answers to such questions in the coming weeks.

- **COVID-19 Training Protocols:** The revisions require that employers must continue to provide COVID-19 training. The revisions add new training subjects such as COVID-19 vaccination and testing access and policies, leave policies, and the employer’s respirator policies. Training subjects required under previous regulations, such as how to reduce the spread of the virus, are still required under the revisions.
- **N95 Respirators for Unvaccinated Employees and Stockpiling:** Under the revisions, employers may be able to wait to acquire N95 respirators until unvaccinated employees explicitly ask for them, rather than have the respirators stockpiled. The revisions add the term “upon request” when discussing personal protective equipment, or PPE. But, this remains ambiguous, and future FAQs released by Cal/OSHA may clarify.
- **COVID-19 Testing:** Under the revisions, employers must provide access to free COVID-19 diagnostic testing on paid time to symptomatic employees who are not fully vaccinated, regardless of whether there was a work-related exposure. The test must be a “viral test for SARS-CoV-2 that is approved by the FDA or has an Emergency Use Authorization from the FDA to diagnose current infection with the SARS-CoV-2 virus; and is administered in accordance with FDA approval or the FDA Emergency Use Authorization as applicable.”
- **Exclusion from the Workplace:** Under the revisions, fully vaccinated workers who do not have COVID-19 symptoms no longer need to be excluded from the workplace in the event of a close contact exposure. But, fully vaccinated workers who test positive for COVID-19 must still be excluded from work for ten days after a positive test, even if they are asymptomatic.

As noted, the revisions are ambiguous in some places. In navigating these revisions, and a workplace that embraces some pre- and post-pandemic normalcy, California employers should consult with their Vorys attorney for guidance.

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VORYS COVID-19 TASK FORCE

We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at [vorys.com/coronavirus](https://www.vorys.com/coronavirus).