

Publications

California Employers Must Implement a Comprehensive COVID-19 Prevention Program

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The California Occupational Safety and Health Standards Board recently approved emergency, temporary COVID-19 regulations. Almost every California employer must now establish specific measures to curb the spread of COVID-19. The regulations do not apply to places of employment with one employee who has no contact with anyone else; to employees that work from home; or to employers covered under the state's Aerosol Transmissible Diseases standard, including hospitals, skilled nursing facilities, and clinics. The regulations became effective on November 30, 2020, and will remain in effect for at least 180 days.

Written COVID-19 Prevention Program

Employers must establish, implement, and maintain an effective, written COVID-19 Prevention Program covering 11 different subjects:

1. **A system for communicating** with employees about COVID-19 testing; encouraging employees to identify hazards, exposures, and symptoms without fear of reprisal; and describing procedures for accommodations.
2. **Procedures for identification and evaluation of COVID-19 hazards.** Employers must allow employees and their authorized representatives to participate in the identification and evaluation of COVID-19 hazards. Employers must develop policies and procedures to respond "effectively and immediately" to COVID cases, periodically inspect their workplace to identify COVID-related issues, and ensure compliance with their COVID protocols.
3. **Procedures for investigating and responding to COVID-19 cases in the workplace.** These must include contact tracing and disclosing a potential COVID-19 exposure within 1 business day, without revealing any personal identifying information. Employers must offer COVID-19 testing at no cost to all employees who had potential exposure in the workplace.
4. **Correction of COVID-19 hazards.** Employers must implement effective policies and/or procedures for correcting unsafe or unhealthy conditions, work practices, policies and procedures in a

timely manner.

5. **Training and instruction.** Employers must train employees on their COVID-19 rules and procedures; on the coronavirus itself, its transmission, and mitigation; on the methods and importance of proper hand hygiene, physical distancing, and face coverings; and on leave rights available to the employees under California and federal law (e.g., the FFCRA).
6. **Physical distancing.** The regulation states that “all employees shall be separated from other persons by at least six feet, except where an employer can demonstrate that six feet of separation is not possible, and except for momentary exposure while persons are in movement.”
7. **Face coverings.** Employers must provide face coverings for employees and (with some limited exceptions) ensure they are worn by employees over the nose and mouth when indoors, when outdoors and less than six feet away from another person, and where required by orders from the state or local health department. Employers must implement measures to communicate to non-employees the face coverings requirements on their premises and develop procedures to minimize employee exposure originating from any person not wearing a face covering, including a member of the public
8. **Other engineering controls, administrative controls, and personal protective equipment (PPE).** Employers must implement cleaning and disinfecting procedures (e.g., of frequently touched surfaces) and inform employees of the cleaning protocols and frequency and scope of the cleaning. This includes encouraging and providing facilities for hand sanitizing (use of hand sanitizers with methyl alcohol is expressly prohibited).
9. **Reporting, recordkeeping, and access.** The employer must report information to the local public health department and to the Division of Occupational Safety and Health and retain appropriate records concerning the Program and make those records available to employees.
10. **Exclusion of COVID-19 cases.** Employers must keep employees with COVID-19 exposure out of work for 14 days, and for those employees who are otherwise able to work but are excluded from work due to COVID-19, the employer must continue paying them (through sick leave benefits or otherwise) and protect their jobs (unless the employer shows that the COVID-19 exposure was not work-related). The regulation provides that “employers may use employer-provided employee sick leave benefits for this purpose and consider benefit payments from public sources in determining how to maintain earnings, rights and benefits, where permitted by law and when not covered by workers’ compensation.”
11. **Return to work criteria.** Employees with symptoms of COVID-19 should not return to work until at least 24 hours have passed since a fever of 100.4 or higher has resolved without the use of fever-reducing medications; symptoms have improved; and at least 10 days have passed since symptoms first appeared.

Multiple COVID Infections and Major COVID Outbreaks

The regulations contain additional procedures related to workplace infections. Employers with knowledge of 3 or more COVID-19 cases among employees within a 14-day period must notify the local public health officials **within 48 hours**. Moreover, employers must provide free COVID-19 testing to all employees who remain at the workplace after an outbreak (except for employee who were not present during the period of the outbreak). Employers must exclude COVID-19 cases and employees who were exposed from the workplace. Employers also must (a) “immediately investigate and determine possible workplace related factors” that contributed to the outbreak; and (b) review potentially relevant COVID-19 policies, procedures,

and controls and implement changes as needed to prevent further spread of COVID-19 (the review must be documented and the regulations detail what must be investigated). The regulations also contain requirements for "major outbreaks" (defined as 20 or more COVID-19 cases in a 30-day period).

Conclusion

While California may publish a model Prevention Program and other guidance at some point, employers must take steps now to prepare their Program. Contact your Vorys lawyer if you have questions about California's new requirements or COVID mitigation policies in other jurisdictions.

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VORYS COVID-19 TASK FORCE

Vorys attorneys and professionals are counseling our clients in the myriad issues related to the coronavirus (COVID-19) outbreak. 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).