

COVID-19 Emergency Regulation

On November 19, 2020, the Cal/OSHA Standards Board passed a new emergency temporary COVID-19 standard. The standard (8 CCR §3205) now goes to the Office of Administrative Law (OAL) for approval and will likely go into effect by the end of November. As an emergency temporary regulation, it will remain effective for six months. This standard applies to most employers in California not covered by Cal/OSHA's Aerosol Transmissible Diseases standard. The Aerosol Transmissible Diseases standard applies primarily to health care related employers.

Under the new standard, employers must have a written COVID-19 Prevention Plan that addresses the following:

- System for communicating information to employees about COVID-19 prevention procedures, testing, symptoms, and illnesses, including a system for employees to report exposures without fear of retaliation.
- Identification and evaluation of hazards – screening employees for symptoms, identifying workplace conditions and practices that could result in potential exposure.
- Investigating and responding to cases in the workplace – responding immediately to potential exposures by following steps to determine who may have been exposed, providing notice about potential exposures, and offering testing to workers who may have been exposed.
- Correcting COVID-19 hazards – including correcting unsafe conditions and work practices as well as providing effective training and instruction.
- Physical distancing – implementing procedures to ensure workers stay at least six feet apart from other people if possible.
- Face coverings – providing face coverings and ensuring they are worn.
- Adopting site-specific strategies such as changes to the workplace and work schedules and providing personal protective equipment to reduce exposure to the virus.
- Positive COVID-19 case and illness recording requirements and making the COVID-19 Prevention Plan accessible to employees and employee representatives.
- Removal of COVID-19 exposed workers and COVID-19 positive workers from the workplace with measures to protect pay and benefits.
- Requirements for testing and notifying public health departments of workplace outbreaks (three or more cases in a workplace in a 14-day period) and major outbreaks (20 or more cases within a 30-day period).
- Specific requirements for infection prevention in employer-provided housing and transportation to and from work.

In May 2020 Cal/OSHA issued its “Interim General Guidelines” on Protecting Workers from COVID-19. Cal/OSHA's regulations required protection for workers exposed to airborne infectious diseases such as the coronavirus disease (COVID-19). The Interim guidelines identified specific infection control measures that for California employers to implement and include in their Injury and Illness Prevention Program (IIPP) as required by 8 CCR §3203 and 8 CCR §1509 (construction). SCGMA provided a COVID-19 management plan template to its members in October 2020.

Bottom Line: The main elements to the new standard that differ from interim guidelines are as follows:

- The employer must identify, evaluate, and correct COVID hazards. Identification and evaluation need to be conducted with the participation of employees.
- Employers will need to investigate and notify employees who might have been exposed within one day.
- Employees who may have been exposed must be offered COVID testing at no cost.
- COVID cases must be reported to local health authorities.
- Criteria for employees to return to work after recovering from COVID-19.
- Employers must implement certain protocols if there is an outbreak in the workplace of three (3) or more COVID-19 cases within a 14-day period until there are no new cases for a 14-day period. This includes mandatory testing of all employees in the exposed workplace, immediately and one (1) week later and investigation of possible workplace-related factors that contributed to the outbreak.

In addition, when the temporary standard becomes effective Cal/OSHA may cite and pursue civil penalties against an employer who does not comply with the new emergency temporary standard requirements.