



LAW UPDATE LABOR AND EMPLOYMENT

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IMPORTANT CAL/OSHA UPDATE NEW CAL/OSHA COVID-19 PREVENTION REGULATIONS EFFECTIVE NOVEMBER 30, 2020

California's Occupational Safety and Health Standards Board (Cal/OSHA) issued its proposed COVID-19 emergency general industry safety order on November 19, 2020. The new regulations went into effect on November 30, 2020, and expire on October 2, 2021. According to Cal/OSHA's Finding of Emergency for the proposed rulemaking, the objective of the new safety standard is to reduce employee exposure to the virus that causes COVID-19 and in turn reduce its transmission. The new safety order applies to all employees and places of employment except work places with only one employee without contact with others, employees working from home, and certain other workplaces covered under other safety orders (e.g., healthcare and corrections). Schools and colleges are, therefore, covered employers and must comply with the new safety order. If state or local health department mandates or guidance are more stringent or protective of employees, such mandates or guidance control.

The most significant aspect of the new standard is that employers must develop, implement, and maintain an effective and written **COVID-19 Prevention Program (CPP)**, which may be included in an employer's Injury and Illness Prevention Program (IIPP). The new rule sets forth eleven elements the CPP must contain, with specific subparts (some highlighted here): (1) a system for communicating to employees described aspects of COVID-19, including accommodation of at-risk employees; (2) the identification and evaluation of COVID-19 hazards (the rule requires the employer to allow employee and employee representative participation due to their direct knowledge of working conditions and practices); (3) investigation and response to COVID-19 cases in the workplace (including no cost COVID-19 testing during working hours for employees potentially exposed in the workplace and ensuring confidentiality of employee medical information); (4) correction of COVID-19 hazards (with controls in place to effectively respond to and correct unsafe or unhealthy conditions); (5) employee training and instruction (including COVID-19-related benefits and leave rights); (6) physical distancing; (7) face coverings (employer provided); (8) other controls and protections (e.g., installation of solid, cleanable partitions, maximizing ventilation systems, cleaning, disinfecting and personal protective equipment); (9) reporting, record keeping and access (including access by employees and authorized employee representatives); (10) exclusion of COVID-19 cases in the workplace; and (11) return to work criteria (employers may not require a negative COVID-19 test in order for an employee to return to work).

Also required by the new regulations are specified protocols the employer must follow if the local health department¹ has identified a “COVID-19 outbreak”² at the employer’s location or when there are three or more COVID-19 cases within an “exposed workplace”³ within a 14-day period. This includes, among other requirements, COVID-19 testing of all employees at the exposed workplace, at no cost to the employee and during working hours, immediately and then one week later. After the first two tests, employers are required to continue testing employees who remain at the workplace every week until no new COVID-19 cases have been detected in the workplace for a 14-day period. Employers are required to contact the local health department immediately, but no later than 48 hours, after the employer knows, or should know with reasonable inquiry, of three or more COVID-19 cases. Schools Legal Service has developed a template Notice to Local Health Department of COVID-19 Outbreak for districts to use to comply with this notice requirement. Districts are presently required to provide the local health department with the specific information in the template notice.

Commencing January 1, 2021, districts will also be required to provide employees and their exclusive representatives, and employers of subcontractors with notice of potential exposure to COVID-19 at a worksite. AB 685 was passed on September 17, 2020, and amends Labor Code sections 6325, 6409.6, and 6432 to require employers to give notice to employees and their exclusive representatives, and employers of subcontractors with notice of a potential exposure to COVID-19 at a worksite. Notice of a potential exposure means any of the following:

- (1) notification to the employer or representative from a public health official or licensed medical provider that an employee was exposed to a qualifying individual⁴ at a the worksite;
- (2) notification to the employer or representative for an employee, or their emergency contact, that the employee is a qualifying individual;
- (3) notification through the testing protocol of the employer that the employee is a qualifying individual;
- (4) notification to an employer or representative from a subcontracted employer that a qualifying individual was on the worksite of the employer receiving notification.

Schools Legal Service has also developed template notices to employee and exclusive representatives and employers of subcontractors for districts to utilize. While these additional notices are not technically required until January 1, 2021, the practical impact of the Cal/OSHA emergency general industry safety regulations outlined in this update make the use of these notices tantamount to effective currently.

¹ California Labor Code §6409.6(b)

² <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/OutbreakDefinitionandReportingGuidance.aspx>;

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Employer-Guidance-on-AB-685-Definitions.aspx>

³ <https://www.dir.ca.gov/oshsb/documents/COVID-19-Prevention-Emergency-txtbrdconsider.pdf>

⁴ California Labor Code §6409.6(D)(4): “qualifying individual” means any person who has any of the following: (a) a laboratory-confirmed case of COVID-19, as defined by the State Department of Public Health; (b) a positive COVID-19 diagnosis from a licensed health care provider; (c) a COVID-19 related order to isolate provided by a public health official; or (d) dies due to COVID-19, in the determination of a county public health department in the COVID-19 statistics of a county.

The above listed requirements of the new Cal/OSHA COVID-19 prevention regulations are a summary only and should be reviewed thoroughly by your safety leads and consultants to ensure full compliance. Existing COVID-19 plans and protocols should be reviewed and updated to ensure the new COVID-19 safety standards are being met. SLS can assist individual districts with review of a proposed CPP and other COVID-19 safety protocols and procedures. We have included the link to the Model COVID-19 Prevention Program released by Cal/Osha today.⁵ While the regulations did not specify the time within which employers should have a CPP in place, particularly given the comprehensive requirements of the new regulations, including participation by employees and exclusive representatives, districts should develop and implement a CPP as soon as reasonably possible and tailored to each district's unique location(s) and workplace. Districts are encouraged to work with their safety leads and employees in identifying and evaluating potential COVID-19 hazards.

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⁵ https://www.dir.ca.gov/dosh/dosh_publications/CPP.doc. Cal/OSHA also issued an FAQ and a one-page fact sheet regarding the new regulations. <https://www.dir.ca.gov/dosh/coronavirus/COVID19FAQs.html>; https://www.dir.ca.gov/dosh/dosh_publications/COVIDOnePageFS.pdf