



LAW UPDATE

LABOR AND EMPLOYMENT

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IMPORTANT CAL/OSHA ETS EXTENSION & REVISION NOW IN EFFECT

On December 16, 2021, Cal/OSHA readopted the COVID-19 Prevention Emergency Temporary Standards (ETS). The revised version went into effect on January 14, 2022, and is scheduled to last through April 14, 2022. The official version of the readopted ETS approved by the California Office of Administrative Law has now been [posted](#). After the issuance of the [Guidance for Local Health Jurisdictions on Isolation and Quarantine of the General Public](#) by the California Department of Public Health (CDPH), the California Department of Industrial Relations (DIR) provided an updated [Fact Sheet](#) on the changes made in the readopted ETS. The DIR also provided an [Isolation and Quarantine](#) fact sheet and updated its [Frequently Asked Questions](#) to specifically address the changes made in this version of the ETS and the impacts of the CDPH guidance.

Workplace Exclusion

The new isolation and quarantine recommendations from the CDPH replace the exclusion periods and return to work criteria in sections 3205(c) and 3205(c)(1) of the ETS. The DIR prepared its own version of [isolation and quarantine tables](#) similar to the tables included in the CDPH guidance.

The isolation requirements apply to **all** employees, regardless of vaccination status, previous infection, or lack of infection. The entirety of the exclusion and return to work requirements for COVID-19 positive employees are listed in Table 1. A COVID-19 positive employee must be excluded from work for a minimum of five days. The isolation could end after day five if symptoms are not present or are resolving and a test collected on day five or later tests negative. If an employee does not test and their symptoms are not present or are resolving, the isolation can end and the employee may return to work after day 10. Other scenarios are listed in Table 1. If an employee does return to work before day 10, the employee must wear face coverings around others for a total of 10 days, particularly in indoor settings with reference to the requirements of the [revised guidance regarding face coverings](#). Please note that antigen tests are now the preferred form of testing for purposes of returning employees to work.

Table 2 contains the provisions regarding the exclusion periods for an employee who has been exposed to someone with COVID-19 and must quarantine. These requirements apply to employees who

are unvaccinated or are vaccinated and booster-eligible but have not yet received their booster dose. This booster-eligible classification is new under this set of guidance. The [CDC COVID-19 Booster Shots](#) tables need to be referenced to determine who is booster-eligible. The Centers for Disease Control and Prevention (CDC) tables should be checked regularly to confirm there have not been any changes. This table has very similar requirements to those provided in Table 1 and also includes a provision to strongly encourage employees to get vaccinated or boosted.

There is an exception to the strictures of Table 2 for asymptomatic employees who are vaccinated and booster-eligible but have **not** yet received their booster dose. If such an asymptomatic employee has a negative test within three to five days after last exposure to a COVID-19 case, wears a face covering around others for a total of 10 days, and the employee continues to have no symptoms, that employee is not required to be excluded from work.

Table 3 lists the employees that do **not** have to quarantine if they are exposed to someone with COVID-19 as those who are “boosted” or are vaccinated, but not yet booster-eligible. The same CDC tables are to be referenced to determine who is booster-eligible. While these employees do not need to quarantine, they do need to test on day five with a negative result and wear face coverings for 10 days after exposure, particularly in indoor settings.

Notice Requirements

The new version of the ETS makes changes to the **written** notice that must be provided within one business day in a form readily understandable by employees to the people at the worksite that may have been exposed to COVID-19. One of the added provisions is that this notice can be “in the manner the employer normally uses to communicate employment-related information.” Additional language also clarifies that the notice must go to only those employees (or independent contractors and other employers) **“on the premises at the same worksite as the COVID-19 case during the high-risk exposure period.”** (New language in bold.)

Under Section 3205(c)(3)(B)4, the revised notice provision now provides as follows regarding the required notice to an authorized representative:

Within one business day of the time the employer knew or should have known of the COVID-19 case, the employer shall;

- a. provide the notice required by Labor Code section 6409.6(a)(2) and (c) to the authorized representative, if any, **of the COVID-19 case and of any employee who had a close contact; and**
- b. **provide the notice required by Labor Code section 6409.6(a)(4) to the authorized representative, if any, of any employee who was on the premises at the same worksite as the COVID-19 case during the high-risk exposure period.**

(New language in bold.) Your workflows for providing notifications within one business day after you know or should have known of a COVID-19 positive employee will need to be updated based on this revised language.

Face Coverings

The readopted ETS also provides a more detailed definition of what is a compliant face covering. The updated face covering definition specifically includes a: (1) surgical mask, (2) medical procedure mask, (3) respirator worn voluntarily, or (4) tightly woven fabric or non-woven material of at least two layers (i.e., fabrics that do not let light pass through when held up to a light source). Gaiters may be compliant face coverings if they have two layers of fabric or can be folded to make two layers. A face covering must be a solid piece of material without slits, visible holes or punctures, and must fit snugly over the nose, mouth, and chin with no large gaps on the outside of the face.

The ETS will continue to allow vaccinated employees to not wear face coverings while in the workplace, however, the December 13, 2021 CDPH updated [Guidance for the Use of Face Coverings](#) requires masks to be worn in all indoor public settings, irrespective of vaccination status. The CDPH order was originally set to be in effect for the time period of December 15, 2021 through January 15, 2022. This updated CDPH guidance will require all employees, regardless of vaccination status, to wear face coverings. It was revised on January 5, 2022, to last through February 15, 2022.

Testing

Commencing January 14, 2022, the ETS' distinction between vaccinated and unvaccinated employees with respect to testing is eliminated. Employers will now be required to offer testing to all workers identified as (1) close contacts, or (2) as a member of an exposed group, and/or (3) in outbreak situations, regardless of vaccination status. Testing must be offered to all identified employees, even if the employee is asymptomatic. The only exception to this requirement is for asymptomatic employees who have recovered from COVID-19 in the last 90 days. Employers will continue to be required to offer testing at no cost to employees during paid time.

Importantly, the revised ETS changed the definition of "COVID-19 test." Included in the definition of a "COVID-19 test" is one which includes specific instructions for workers using a test at home with self-read results. The employer or a telehealth professional must observe the test results for a COVID-19 test administered at home. Other examples of acceptable tests include: (1) tests with specimens that are processed by a laboratory (including home or on-site collected specimens which are processed either individually or as pooled specimens), (2) proctored over-the-counter tests, (3) point of care tests, and (4) tests where specimen collection and processing is either done or observed by an employer

Our office is available to assist with any questions related to the ETS or other COVID-19 matters. Please reach out as needed for assistance.

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