

Blog Post

What California Employers Need to Know About The Emergency Cal/OSHA COVID-19 Regulations

December 9, 2020

By [Melissa L. Cizmorris](#) and [Nancy Sotomayor](#)

Nearly all California employers must take steps now to comply with the requirements imposed by the new slate of emergency regulations intended to minimize the spread of COVID-19 in California workplaces. These regulations, adopted by CAL/OSHA on November 30, 2020 are immediately effective. Here is what employers need to know now to protect their businesses and their employees.

Who Must Comply

The new Emergency Temporary Standards (ETS) apply to all employers, employees, and places of employment except: (i) workplaces with only one employee who does not have contact with other people; (ii) employees who work from home; and (iii) employees covered by the Aerosol Transmissible Diseases regulation.

Employers who do not fall in these narrow exceptions must immediately review their current COVID-19 policies and procedures or implement a written COVID-19 Prevention Program (CPP) as described below.

COVID-19 Prevention Program

One of the main requirements of the ETS is that employers must develop a CPP, or incorporate CPP

Related People

Melissa L. Cizmorris
Nancy Sotomayor

Related Work

Employment Training
and Compliance
Labor and Employment

Related Offices

Denver
Los Angeles

HR Defense

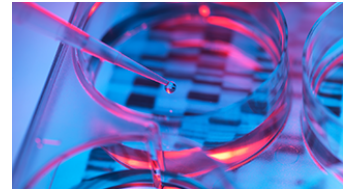
Akerman Perspectives
on the Latest
Developments in Labor
and Employment Law

[Visit this Akerman blog](#)

Coronavirus
Resource Center

requirements in an existing Injury and Illness Prevention Program. The CPP must do the following:

[Visit the Resource Center](#)



- Communicate to employees about the employer's COVID-19 prevention procedures.
- Identify, evaluate and correct COVID-19 hazards.
- Require physical distancing of at least six feet unless it is not possible.
- Require use of face coverings.
- Use engineering controls, administrative controls and personal protective equipment as required to reduce transmission risk.
- Implement procedures to investigate and respond to COVID-19 cases in the workplace.
- Provide COVID-19 training to employees.
- Provide testing to employees who are exposed to a COVID-19 case, and in the case of multiple infections or a major outbreak, implement regular workplace testing for employees in the exposed work areas.
- Exclude COVID-19 cases and exposed employees from the workplace until they are no longer an infection risk.
- Maintain records of COVID-19 cases and report serious illnesses and multiple cases to Cal/OSHA and the local health department, as required.

To assist employers in this process, Cal/OSHA has created a Model COVID-19 Prevention Plan for employers to use, which can be accessed [here](#).

When Employees Get Sick, Employers Must Exclude, Investigate, and Correct

Employers must investigate any COVID-19 cases in the workplace. The investigation should determine which employees were exposed, when the COVID-19 case last worked, and, if possible, the date of the onset of symptoms. The investigation also should look into whether any workplace conditions could have contributed to the risk of COVID-19 exposure. If

so, employers must immediately move to correct any unsafe or unhealthy conditions, work practices, policies, and procedures.

Employers must develop a process for screening employees and for responding to employees with COVID-19 symptoms. Further, employers must ensure that a process is set in place to immediately address any COVID-19 cases that may arise.

Employees testing positive for COVID-19 and those potentially exposed must be excluded from the workplace until:

- The employee has been without a fever (defined as a temperature of 100.4 or higher) for at least 24 hours.
- The employee's COVID-19 symptoms have improved.
- At least 10 days have passed since COVID-19 symptoms first appeared. If an individual has tested positive but not developed symptoms, he or she cannot return to work until a minimum of 10 days have passed since his or her first positive COVID-19 test.
- If the employee has been ordered to isolate by the local state or health official, the employee cannot return to work until the quarantine period has been lifted or the order is lifted.

The employer may not, however, require a negative COVID-19 test result before the employee can return to work. In all cases, an employer should exclude an employee with COVID-19 from the workplace for 14 days after the last known exposure.

Employers must ensure that the employee's job does not change, his or her benefits remain the same, and that their job remains open for return.

Employers must provide employees with information possible leave benefits employees may have if they contract COVID-19, including benefits available under workers' compensation law, the

federal Families First Coronavirus Response Act, the California Labor Code, the employer's own leave policies, and any leave guaranteed by contract.

Employers Must Provide COVID-19 Safety Training

Employers must also provide training that provides information on COVID-19 symptoms and exposure, the employer's COVID-19 policies and procedures, and COVID-19 related benefits under applicable federal, state, or local laws. As a supplement for employers to use with their site-specific training, Cal/OSHA has provided training resources on its website for employers to use. These resources can be accessed [here](#).

Further, employers must provide information to employees on ways they can obtain testing. In the event of a potential COVID-19 work-related exposure, employers must offer testing at no cost and during working hours. All employer-provided testing and related medical services must ensure the confidentiality of employees.

Employer Situations That Call for Additional Requirements

It is important to note there are additional standards for employers who: (i) experience a COVID-19 outbreak of 3 or more employees; (ii) experience a major COVID-19 outbreak of 20 or more employees; (iii) provide employee housing; or (iv) provide employer-sponsored transportation, which are specified below.

- Multiple Cases: When an employer knows or should have known of three or more COVID-19 cases in an exposed workplace within a 14-day period, the employer must do the following:
 - Inform the local health department no later than 48 hours and continue to provide notice with every new case;

- Immediately provide testing to all employees who were present during the relevant period and provide a second test a week later;
- Employees who remain at the workplace will continue to be tested at least once per week until there are no new cases for a 14-day period;
- Implement changes to reduce the transmission, including moving indoor tasks to the outdoors; and
- The investigation should be documented and reviewed every 30 days if new information is available or when necessary.
- Major Outbreaks: In the case of a major outbreak (20 or more COVID-19 cases in a workplace within a 30-day period), employers must also take the following actions until there are no new cases for a 14-day period:
 - Employers must provide testing at no cost to employees who were present at the workplace during the relevant 30-day period and who remain at the workplace at least twice a week during working hours;
 - Filter recirculated air with Minimum Efficiency Reporting Value (MERV) 13 or higher efficiency filters if compatible with the ventilation system for structures with mechanical ventilation. If MERV-13 or higher is incompatible, then filters with the highest compatible filtering efficiency shall be used;
 - Evaluate the need for a respiratory protection program or changes to any existing program under Section 5144;
 - Evaluate whether to stop some or all operations; and
 - Any other control measures deemed necessary.
- Employer-Provided Housing and Employer-Provided Transportation: When housing and/or transportation to and from work is provided,

employers should implement the following requirements:

- Provide face coverings.
- Group employees who maintain a household outside of the workplace followed by employees who work in the same crew or at the same worksite.
- Permit six feet of distance in housing units and at least three feet in all directions in company provided transportation.
- Maximize quantity and supply of outdoor air and increase filtration efficiency in both housing units and vehicles.
- Isolate residents with COVID-19 or those who have been exposed from all other occupants. Personal identifying information of residents with COVID-19 or symptoms must be kept confidential.
- Clean housing units once per day and employer-provided transportation before each trip and in between different drivers.
- Provide hand sanitizer in each vehicle and maintain the windows open except when weather conditions do not permit, such as rain or snow.

Overall, a portion of these standards seem to fall in line with existing requirements of the Illness and Injury Prevention Programs that most employers are already required to have. However, they are specified to account for the global pandemic currently taking place. As a result, employers should make a good effort to comply with the ETS, especially when it comes to eliminating hazards and implementing testing requirements during an outbreak. For further assistance with compliance, contact your Akerman attorney.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.