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Cal-OSHA Adopts Revisions to COVID-19 Emergency Temporary Standards in the Workplace

On June 17, 2021, the Cal-OSHA Board voted 5-1 to adopt its [proposed revisions](#) to its Emergency Temporary Standards (ETS), which much more closely align with the CDC guidance. That same day, Governor Gavin Newsom signed an Executive Order enabling these rules to go into effect **immediately**. The revised ETS, among other things, allows fully vaccinated workers to discontinue mask usage and social distancing.

What changes under the revised ETS?

- Regardless of vaccination status, no face coverings are required outdoors (except during outbreaks).
- Unvaccinated workers (or workers who decline to provide their vaccinated status) still need to wear masks indoors except when they are alone in a room or are eating or drinking, in which case they are still required to socially distance themselves.
- In most settings, employers may allow fully vaccinated employees to not wear face coverings indoors but must document their vaccination status (see below for details).
- Fully vaccinated employees **without** symptoms do not need to be tested or quarantined after close contact with COVID-19 cases.
- Employers must provide unvaccinated workers with N95 masks or respirators upon request.
- Employers may not retaliate against employees who wish to continue wearing face coverings.
- Except during outbreaks, no physical distancing or barriers are required, regardless of vaccination status.
- Restaurants and bars may return to full capacity.
- Employers must evaluate ventilation systems to maximize outdoor air and increase filtrations efficiency.

What requirements from the November ETS remain the same?

- Employers must create and maintain an effective written COVID-19 Prevention Program and response plan for cases and outbreaks.

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June 23, 2021

Page 2 of 3

- Employers must provide effective employee training on the prevention plan and their rights under the ETS.
- After potential exposures, employers must offer testing.
- Employees may still be eligible for quarantine and exclusion pay.
- Outbreaks must be reported to public health departments and employees.

Additional employer responsibilities during outbreaks

- Outbreak [three or more COVID-19 cases within a 14-day period]
 - Make testing available at no cost on a weekly basis for employees in the exposed work areas and exclude positive cases from work until the workplace no longer qualifies as an outbreak.
 - All employees in the exposed group, regardless of vaccination status, must wear face coverings when indoors or when outdoors and less than six feet from another person.
 - Implement social distancing and barriers.
- Major Outbreak [twenty or more COVID-19 cases within a 30-day period]
 - Make testing available at no cost at least twice weekly for employees in the exposed work areas and exclude positive cases from work until no new cases are detected for a 14-day period.
 - Offer respirators or N95 masks to all employees, regardless of vaccination status.
 - Implement social distancing and barriers.
 - Consider halting all or part of operations to control the virus.
- Fully vaccinated employees do not need to be excluded from the workplace unless they develop symptoms, in which case they are to be excluded the same as unvaccinated employees.
- ETS does not require an employee to have a negative test to return to work.

Vaccination Documentation

If an employer permits fully-vaccinated employees to work indoors without a face covering, it must document the vaccination status of its employees. An employee is fully vaccinated two weeks after receiving the second shot of Moderna or Pfizer vaccines or two weeks after the Johnson & Johnson vaccine.

The Department of Industrial Relations [“DIR”] has issued guidance on how to document the vaccination status of employees, providing the following three options:

- (1) Employers may retain a copy of the vaccine card;
- (2) Employers may inspect the vaccine card and maintain a separate record of employees who presented proof (but not retain the vaccine record itself); **or**
- (3) Employers may permit employees to self-attest, and the employer maintains a record of who self-attests.

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June 23, 2021

Page 3 of 3

Employees have the right to refuse to disclose their vaccination status to an employer, in which case employers will treat them as unvaccinated. Employers must maintain these records confidentially and must have them on file for any employee who will be taking advantage of the new rules. Alternatively, employers may require all employees to wear a face covering instead of having a documentation process.

For more information and continued updates, please see the DIR's FAQ page [here](#).

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