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Cal/OSHA Emergency COVID-19 Workplace Safety Standard Takes Effect

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Cal/OSHA has promulgated [emergency regulations](#) for preventing COVID-19 transmission in the workplace (the “Emergency Standard,” or the “Standard”). The Emergency Standard became effective immediately upon approval by the Office of Administrative Law on November 30, 2020, and will remain in effect for six months. It may be extended or converted to permanent regulations by Cal/OSHA. The Emergency Standard, now codified in Title 8, sections 3205; 3205.1; 3205.2; 3205.3; and 3205.4 of the California Code of Regulations, imposes numerous requirements on employers, many of which will be familiar after months of battling COVID-19 challenges in the workplace. However, there are some new requirements that businesses need to be aware of to ensure they are in compliance.

The new Emergency Standard applies to all employees and workplaces except: (1) employees working from home, (2) employees already covered by Cal/OSHA’s Aerosol Transmissible Diseases regulation, and (3) workplaces with only one employee with no contact with other people. The centerpiece of the Emergency Standard is the requirement for employers to develop a written COVID-19 Prevention Program or ensure that the required elements are included in an existing Injury and Illness Prevention Program (“IIPP”). The program must include discrete written elements, with detailed requirements for each of the following topics: (1) a system for communicating about COVID-19 with employees; (2) a method of identifying and evaluating COVID-19 hazards; (3) investigation and response to COVID-19 cases in the workplace; (4) a system for correcting COVID-19 hazards in the workplace; (5) employee training on COVID-19; the implementation of (6) physical distancing and (7) face coverings; (8) utilization of engineering and administrative controls including Personal Protective Equipment (PPE); (9) reporting and recordkeeping protocols; (10) excluding COVID-19 cases from the workplace; and (11) return to work criteria for those who have contracted COVID-19. Cal/OSHA has posted [on its website](#) answers to Frequently Asked Questions and a model COVID-19 Prevention Plan that businesses can modify for their workplaces.

Worth highlighting are the requirements for employee testing for COVID-19, as these will be new to many businesses. Employer obligations regarding testing include offering testing to employees at no cost and during working hours in the event of a potential COVID-19 work-related exposure (as defined in the regulations) and periodic testing (at least weekly) during an outbreak (three or more cases in a

workplace within a 14-day period) for all employees in the “exposed workplace.” This will require businesses to make arrangements for testing that previously was not an employer responsibility.

Further, the Emergency Standard requires that when employees are excluded from work for having, or having been exposed to COVID-19, but remain “otherwise able and available to work, employers shall continue and maintain an employee’s earnings, seniority, and all other employee rights and benefits, including the employee’s right to their former job status.” Therefore, the Emergency Standard effectively imposes on employers a new paid time off requirement without a cap on the amount of pay provided to employees. This provision does not apply, however, where the employer can demonstrate that the COVID-19 exposure is not work related or employees can be temporarily reassigned to work where they do not have contact with other persons. Additionally, benefit payments from public sources may be considered in maintaining employee earnings.

The Emergency Standard also incorporates elements from recently-enacted Assembly Bill 685, such as the requirement to provide notice of potential COVID-19 exposure to employees and contractors within one business day when there has been a COVID-19 case in the workplace, and provide information to employees on COVID-related benefits that are available.

Otherwise, many of the required elements are also found in existing agency guidance documents, including guidance from Cal/OSHA, but now that they are in promulgated regulations, they are mandatory, and businesses are subject to enforcement action if they are inspected by Cal/OSHA and not in compliance. Because the Standard was promulgated on an emergency basis, Cal/OSHA has stated that it realizes that businesses may not be fully in compliance as of the Emergency Standard’s effective date, and they will take into account businesses’ good faith efforts to comply with the new requirements. Nonetheless, this is not a free pass and businesses will need to be able to show they are either in compliance or making good faith efforts to do so, or they will face citations.

Even if Cal/OSHA is willing to consider good faith efforts to comply when inspecting workplaces, this new Emergency Standard may spur an increase in employee complaints to Cal/OSHA regarding noncompliance. Cal/OSHA was already responding to a substantial increase in complaints regarding COVID-19 workplace safety, and now that there are regulations in place with detailed requirements, those complaints should be expected to increase.

Buchalter has experienced attorneys to assist businesses come into compliance with complex regulatory requirements, including this new Emergency Standard. For further information, please contact one of the attorneys below.



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