

Cal/OSHA Standards Board Adopts COVID-19 Prevention Non-Emergency Regulations

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On December 15, 2022, the Occupational Safety and Health Standards Board (Board) voted to adopt non-emergency COVID-19 prevention regulations (Non-Emergency Regulations). Once approved by the Office of Administrative Law (OAL), these regulations will take effect sometime in January 2023 and will remain in effect for two years after the effective date, except for the recordkeeping requirements that will remain in effect for three years. Employers can review the full comparison of the non-emergency regulations with the current emergency temporary standard (ETS) [here](#).

While the Non-Emergency Regulations include some of the same requirements found in the COVID-19 Prevention Emergency Temporary Standards (ETS), the new provisions and changes are overall less burdensome for employers. Some notable changes from the ETS include:

Changes from ETS

- **No exclusion pay.** Employers are no longer required to pay employees while they are excluded from the workplace. Instead, upon excluding an employee, employers must provide employees with information regarding COVID-19 related benefits that they may be entitled to under federal, state, or local laws; the employer's own leave policies; or other available leave.
- **No standalone COVID-19 Prevention Plan.** Employers are no longer required to maintain a standalone COVID-19 Prevention Plan. Now, employers must address COVID-19 as a workplace hazard under their Injury and Illness Prevention Program or in a separate document, and include procedures to prevent COVID-19 in the workplace. When determining measures to prevent COVID-19 transmission and to identify and correct COVID-19 hazards, employers must:
 - Consider all persons to be potentially infectious;
 - Review applicable guidance from the State of California and local health department and treat COVID-19 as an airborne infectious disease;
 - Provide effective COVID-19 hazard prevention training;
 - Develop effective methods for responding to COVID-19 cases, including excluding employees from the workplace and providing information regarding COVID-19 related benefits to which the employee may be entitled under applicable federal, state, or local laws.
 - Investigate COVID-19 cases and certain employees after close contact;
 - Record and track all COVID-19 cases for at least two years.
- **Report "major" outbreaks to Cal/OSHA.** Employers will no longer be required to report outbreaks to the local health department.
- **Changes to definitions.**
 - "Close contact" is now updated to align with the California Department of Public Health (CDPH) [definition](#).
 - "Exposed group" now includes employer-provided transportation and employees residing within employer-provided housing.

Continuation from ETS. With some slight modification, the below provisions from the ETS continue as part of the Non-Emergency Regulations:

- **Testing.** Employers must make testing available at no cost to employees following a close contact. Notably, the ETS was more burdensome as employers had to provide COVID-19 testing for symptomatic employees even if they did not have a close contact in the workplace.
- **Notice.** Employers must notify affected employees of COVID-19 in the workplace. Slightly different than the ETS, the Non-Emergency Regulation requires that this notice is made as “as soon as possible” versus the ETS’ requirement of within one business day.
- **Face Coverings.** Employers must provide face coverings when required by CDPH and respirators upon request.
- **Reporting and recordkeeping.** Employers must record and track all COVID-19 cases and report any employee deaths, serious injuries, or serious illnesses as required by Cal/OSHA’s reporting requirements under subsection § 342(a).
- **Exclusion.** Employers must exclude COVID-19 cases.
- **Ventilation.** Employers must review CDPH and Cal/OSHA guidance to develop, implement, and maintain effective methods to prevent COVID-19 transmission by improving ventilation. The Non-Emergency Regulation is slightly more onerous than the ETS as it requires employers to either maximize the supply of outside air to the extent feasible, use the highest level of filtration efficiency compatible with their existing ventilation system or at least as protective as MERV-13, or use high efficiency particulate air (HEPA) filtration units.

Takeaways: Haynes Boone will continue monitoring when the OAL approves the Non-Emergency Regulations. Also, Cal/OSHA’s website indicates that FAQs and a Model Written Program will be available soon for additional guidance as to how to comply with the new rules. In the interim, Employers should review their IIPP to ensure that COVID-19 is now addressed as a workplace hazard and update their procedures to include mitigation of COVID-19 workplace.