California/OSHA – Updates for Employers

By Matthew Thomas Deffebach, Mini Kapoor, Ph.D. | May 26, 2022

RELATED PRACTICES OSHA, Employment Litigation, Labor and Employment

This alert summarizes recent updates from California/OSHA ("OSHA") that employers should understand, monitor and follow, as applicable.

1. Revised COVID-19 ETS (Effective until December 31, 2022)

- Notable revisions to the COVID-19 ETS include:
- Face coverings are no longer required in all indoor locations but are subject to the California Department of Public Health (CDPH) face covering requirements.
- Employers are required to provide respirators to employees who request them for voluntary use regardless of vaccination status, and in compliance with OSHA requirements for voluntary use of PPE.
- Cleaning and disinfecting requirements are mostly terminated.
- COVID-19 testing must be made available at no cost and during paid time to employees with COVID-19 symptoms regardless of vaccination status and regardless of whether there is a known exposure. COVID-19 testing must also be made available to employees who had a close contact with COVID-19 cases in the workplace, during outbreaks, and during major outbreaks.
- Employers must follow CDPH guidelines for excluding employees from the workplace and also for implementing quarantine and other measures in the workplace to prevent COVID-19. See the current requirements here.
- Regardless of their vaccination status, positive employees can return to work after 5 days if the employee has a negative test, symptoms are improving, and they wear a face covering at work for an additional 5 days. Otherwise, most employees can return after 10 days.

2. Protect Employees from Outdoor Heat

The upcoming summer months should serve as a reminder that outdoor workplaces must comply with OSHA's Heat Illness Prevention standard. The standard covers all employers with an outdoor place of employment (including worksites that have both indoor and outdoor places of work). The following is a checklist for minimizing potential for heat hazard in the workplace:

- Review and update as needed, the written Heat Illness Prevention Plan based on any changes to the work environment. Sample plan available here; see also OSHA Enforcement FAQs.
- Ensure that employees and supervisors working outdoors are adequately trained with respect to heat illness prevention and emergency response plan related to heat illness.
- Ensure adequate supply of water and encourage sufficient and frequent intake of water.
- Ensure easy access to shade and encourage preventative cool-down rest periods in the shade for all employees working outdoors.
- Ensure close observation of employees that have been newly assigned to a high heat work area for the first 14 days of employment, and for all employees during heat waves.

© 2026 Haynes and Boone, LLP

- Employers in the following industries are subject to additional requirements in high heat (temperature that equals or exceeds 95F)
  - Agriculture;
  - Construction;
  - Landscaping;
  - Oil and gas extraction; and
  - Transportation and delivery of agricultural products and of construction or other heavy materials (e.g., furniture, lumber, freight, cargo, cabinets, industrial or commercial materials).

3. SB 606 Has Expanded OSHA's Enforcement Authority (Effective January 1, 2022)

- *Rebuttable Presumption of Enterprise-Wide Violations:* For employers with multiple worksites in California, SB 606 creates a rebuttable presumption that a violation is occurring "enterprise-wide" at all worksites if: (1) the employer has a noncompliant written health and safety policy or procedure; or (2) OSHA "has evidence of a pattern or practice of the same violation or violations committed by that employer involving more than one of the employer's worksites." Unless rebutted, OSHA may issue an enterprise-wide citation requiring abatement at every employer worksite in the state. To minimize potential for enterprise-wide citations, employers need to be mindful of the communications with OSHA. Among other things, it might be prudent to train managers to provide site-specific responses to OSHA's requests. In other words, while the employer may have enterprise-wide safety policies, it might be helpful to stress any site-specific nuances in policies and, where possible, identify how hazards are assessed in a site-specific manner dependent on the unique circumstances at each worksite. Regarding the pattern and practice trigger, an employer's violation history could presumably be used by OSHA to also assert a pattern and practice for pursuing enterprise-wide relief.
- *Egregious Violations:* SB 606 also authorizes OSHA to issue a citation for an "egregious violation" of an occupational safety or health standard, order, special order, or regulation. An "egregious" violation is one where: (1) the employer intentionally, through conscious, voluntary action or inaction, made no reasonable effort to eliminate the known violation; (2) violations resulted in worker fatalities, a worksite catastrophe, or a large number of injuries or illnesses; (3) violations resulted in persistently high rates of worker injuries or illnesses; (4) the employer has an extensive history of prior violations; (5) the employer has intentionally disregarded its health and safety responsibilities; (6) the employer's conduct, taken as a whole, amounts to clear bad faith in the performance of its duties; or (7) the employer has committed a large number of violations so as to undermine significantly the effectiveness of any safety and health program that may be in place. A means to minimize potential for egregious violation could be to document employer's good faith efforts to comply with OSHA standards, and when compliance is not feasible, document efforts to explore and implement alternative safety measures that are at least as effective as the standard's requirements.
- *Subpoena Power:* SB 606 allows subpoenas for failing to provide requested information to OSHA within a reasonable period of time. The law does not define the term "reasonable," but employers receiving a document request from OSHA should communicate with OSHA as to the expectation on timing of document production.
- *Injunction and Temporary Restraining Order:* OSHA can also seek an injunction restraining certain operations at a workplace merely on the basis that it has grounds to issue a citation. This is a significant expansion of OSHA's earlier ability to seek injunctive relief, which it could only seek if "the condition of any employment or place of

© 2026 Haynes and Boone, LLP

employment or the operation of any machine, device, apparatus, or equipment constitute[d] a serious menace to the lives or safety of persons about it." SB 606 also provides a similar expansion of OSHA's authority to seek temporary restraining orders. As shutting down operations at a workplace pursuant to an injunction could have a significant effect on a business, employers should utilize their best efforts in cooperating with OSHA to minimize the potential for the agency to seek injunctive relief.

4. Proposed Workplace Violence Prevention Standard For All Industries

OSHA is currently seeking input on proposed revisions to a new Workplace Violence Prevention Standard for all industries. Notable revisions include:

- *Definitions:*
    - Threat of violence: Defined as "a statement or conduct that causes a person to fear for their safety because there is a reasonable possibility the person might be injured, and that serves no legitimate purpose." The proposed definition no longer requires that the possible injury be "physical."
    - Workplace violence: Defined as "any act of violence or threat of violence that occurs in a place of employment," but does not include "lawful acts of self-defense or defense of others, or self-inflicted harm that does involve violence or threats of violence to others."
- *Workplace Violence Prevention Plan:* Employers would be required to have procedures to review their Workplace Violence Prevention plan periodically and after a workplace violence incident, regardless of whether the incident results in an injury.
- *Training Requirements:* Employees would need to be provided "general awareness training on workplace violence" that includes training on the employer's Workplace Violence Prevention Plan, how to obtain a copy of the Plan, how to participate in development and implementation of the Plan, the definitions and requirements in the Workplace Violence Prevention Standard, and how to report workplace violence incidents or concerns to the employer without fear of reprisal.
- *Workplaces With Violence Incident Within Previous Five Years:* For such workplaces, training would need to include workplace violence hazards specific to the employees' jobs, the corrective measures the employer has implemented, how to seek assistance to prevent or respond to violence, and strategies to avoid physical harm. A Violent Incident Log would be required to include information about every workplace violence incident.
- *Involvement of Employees and Authorized Employee Representatives:* Employers would need to involve employees and authorized employee representatives in the development and implementation of the workplace violence prevention plan.

© 2026 Haynes and Boone, LLP