

Cal/OSHA COVID-19 Safety Rules to be Revised

The Cal/OSHA Standards Board is scheduled to meet on May 20, 2021 to review proposed revisions to the Emergency Temporary Standards (“ETS”) on COVID-19 Safety in the workplace that were originally adopted in November, 2020. The rules are expected to be readopted with the revisions and sent on to the Office of Administrative Law for an abbreviated five-day public notice and comment period as an emergency action before taking effect. Although California has announced the intent to fully re-open businesses on June 15 due to the improvements in COVID-19 infections and hospitalizations, businesses will continue to be required to comply with measures such as the ETS until they are repealed.

The core elements of the COVID-19 ETS will remain in place in the readopted regulations, including the need for employers to have a written COVID-19 Prevention Program. That written Program must detail protocols for identifying and addressing COVID-19 hazards in the workplace, responding to positive cases, providing notice to employees and contractors of positive cases, testing of employees, and requirements for excluding from the workplace employees who test positive and employees who had close contact with a positive case.

Revisions to many of the provisions appear intended to address comments and concerns regarding difficulties with implementing the original ETS provisions and should make compliance a bit easier. Nonetheless, employers are going to need to review these revised rules to determine whether changes are required to their COVID-19 Prevention Programs and associated workplace protocols. For example, the revised rules will more clearly state that the written notice that must be issued within one business day of learning of a positive COVID-19 case in the workplace will need to go to all employees and contractors at the worksite during the high-risk exposure period. This is a policy many employers have adopted already but is made explicit in the revised ETS.

Significant changes proposed include addressing employees who have been fully vaccinated or have had COVID-19 and have recovered, topics not addressed in the original ETS. Immunized employees will be exempt from testing even if they were in close contact with an employee who tested positive and immunized employees will not need to be excluded from the workplace after close contact with a COVID-19-positive employee. While there will be a similar exception for employees who have contracted COVID-19 and recovered, it appears the exception will be limited to 90 days after the initial onset of symptoms or after the first positive test if there were no symptoms. This presumes that immunity from having had COVID-19 only lasts for 90 days and will be challenging for employers to track. The proposed exception for employees who have been fully vaccinated does not have a similar

time limit. This may lead to more employers requiring employees to get vaccinated, already a point of contention and litigation.

There are a number of provisions that will take effect July 31, 2021 that employers should note. One is that employers will be required to make COVID-19 testing available at no cost to employees with COVID-19 symptoms who are not fully vaccinated. The existing ETS requires that testing be made available to all employees who had close contact with a confirmed COVID-19 case but not until the employer was made aware of a positive case. In addition, by July 31, employers are to provide respirators (now defined to include N95 filtering facepieces) to employees for voluntary use if they are working indoors and are not fully vaccinated.

The proposed ETS and associated documents can be found at <https://www.dir.ca.gov/oshsb/COVID-19-Prevention-Emergency.html> under the "Readoption Documents" section.

Buchalter has experienced attorneys to assist businesses come into compliance with complex regulatory requirements and have been advising clients on responses to COVID-19. For further information, please contact one of the attorneys below.



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