

December 11, 2020

## ALERT!

### Emergency COVID-19 Regulation Now in Effect

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[MCAC's November 23, 2020 Alert](#) warned of the impending implementation of an emergency COVID-19 regulation that received unanimous approval by the California Occupational Safety and Health Standards Board. As expected, that [emergency COVID-19 regulation](#) became effective **November 30** after also receiving Office of Administrative Law (OAL) approval. See Cal/OSHA News Release [here](#).

#### Key Takeaways:

#### I. IMPORTANT DEFINITIONS

**A. COVID-19 Case** (Pg. 1) - A person meeting the following criteria:

1. positive COVID-19 test;
2. subject to a COVID-19 quarantine order by a local or state health official; OR
3. has died due to COVID-19

**B. COVID-19 Exposure** (Pg. 1) - Being within six feet of a *COVID-19 case* for a cumulative total of 15 minutes or more in any 24-hour period within or overlapping the *high-risk exposure period* regardless of the use of face coverings.

**C. High-Risk Exposure Period** (Pg. 2) - This definition is modified slightly depending on whether the person has symptoms.

1. With Symptoms - Two days before symptoms develop until ten days after symptoms first appear **plus** 24 hours have passed without fever and use of fever-reducing medicines and symptoms have improved.
2. Without Symptoms - Two days before until ten days after the first positive COVID-19 test.

**D. Exposed Workplace** (Pg. 2) - Any work location, working area, or common area at work used or accessed by a *COVID-19 case* during the *high-risk period*. Includes bathrooms, walkways, hallways, and break rooms / eating areas.

If, within 14 days, three *COVID-19 cases* share the same "exposed workplace," then the Multiple COVID-19 Infections and COVID-19 Outbreaks standard (section 3205.1 pg. 13-16) applies and additional testing will be required. See item II, H & I below.

**E. Major COVID-19 Outbreak** (Pg. 15) - Twenty or more *COVID-19 cases* in an *exposed workplace* within a 30-day period until no new cases are detected for 14 days.

#### II. REGULATION REQUIREMENTS

The regulation's twenty-one pages cover requirements from a written COVID-19 plan to training and PPE. Below are the highlights. Of particular note are the reporting and compensation rules. Refer to the regulation for complete details. Regulation page numbers for each item are provided for ease of reference.

**A. Written COVID-19 Prevention Program** that may be a separate document or be

integrated to an existing Injury and Illness Prevention Program (IIPP).

- [Cal/OSHA model COVID-19 Prevention Plan](#)
- [MCAA model plan](#)
- Ref. pg. 3 of the regulation for mandatory components of a written plan.

**B. Allow for employee and authorized employee representative to participate in identification and evaluation of COVID-19 hazards.** (Pg. 3)

- The rule does not explicitly require employee participation, but employers must allow it.
- The employer has flexibility in how it allows worker participation in hazard identification and evaluation.

**C. Notify potentially exposed employees, their authorized representatives, independent contractors, and any other employer with potentially exposed employees **within 1 business day**** without disclosing the identity of those infected or displaying symptoms. (Pg. 5)

**D. Offer COVID-19 testing during work hours at no cost to all employees potentially exposed to the virus at work.** (Pg. 5)

- Testing sites could include your local health department, your health insurance plan, or a community testing center.
- Testing *and* tracing services may be provided by your current safety consultant.
- Other providers include [Innovative Human Performance Safety](#) and [Matrix Medical Network](#).

**E. Keep a CONFIDENTIAL record and track all COVID-19 cases documenting the following:** (Pg. 10)

1. Employee's name
2. Contact information
3. Location where employee worked
4. Last day the employee was at that workplace location
5. Date of positive COVID-19 test

This information is to be available to employees, authorized employee representatives, or as otherwise legally required, with personal identifying information removed.

**F. Exclude *positive* COVID-19 employees and employees *with exposure* from the workplace.** (Pg. 11)

1. **Positive employees** shall not return to work until at least 24 hours have passed since a fever of 100.4 or higher has resolved without medication, symptoms have improved, AND at least 10 days have passed since COVID-19 symptoms first appeared.
2. **Exposed employees** are to stay away from work for 14 days after the last known exposure.
3. **Note:** A negative COVID-19 test is *not* required for an employee to return to work.

**G. Continue to pay excluded employees, maintain their seniority, and all other rights and benefits** if they would otherwise be able and available to work if not for the need to protect others at the workplace from possible COVID-19 exposure.

(Pg. 11)

- This requirement does not apply if the employer demonstrates the COVID-19 exposure is not work related. The burden of proof is on the employer.
- Sick leave may be used.
- Employers may offset any payments with other [public sources](#) such as (i) state disability [for infected employees] or (ii) unemployment [for exposed employees]. See [Chart of Benefits for Workers Impacted by COVID-19](#).
- There are a lot of questions about Cal/OSHA's authority to make such demands regarding employee pay and benefits; however, until a legal challenge determines otherwise, this is the law of the land.

**H. Provide workers with regular testing during "Outbreaks" and "Major Outbreaks."**

- **Outbreaks** - testing at least once a week, defined as 3 or more cases within 14 days. (Pg. 13)
- **Major Outbreaks** - testing at least twice a week, defined as 20 or more cases

within 30 days. (Pg. 15)

- Applies until there are no new COVID-19 cases in the workplace for 14 days.

**I. Report "Outbreaks" and "Major Outbreaks" to the local public health department within 48 hours.** (Pg. 14)

- **Outbreaks** - 3 or more cases in a workplace in a 14-day period
- **Major Outbreaks** - 20 or more cases in a workplace within a 30-day period
- Applies until there are no new COVID-19 cases in the workplace for 14 days.

**J. Report COVID-19-related serious illness (e.g., COVID-19 illness requiring inpatient hospitalization) and deaths immediately to the nearest Cal/OSHA enforcement district office.** (Pg. 10)

Cal/OSHA has said it will consider "good-faith" efforts on the part of employers and will offer compliance assistance. Cal/OSHA is currently seeking to fill 60 field inspector jobs, as advertised in the *Cal/OSHA Reporter News Digest*. Just an observation.

This is an emergency temporary standard effective for six months from its November 30 implementation unless readopted for up to two consecutive 90-day periods.

The information above is a brief overview of the new standard and is not exhaustive of the complete terms contained in the regulation, which are detailed and complex.

We will continue to follow and report on developments.

[Cal/OSHA Emergency COVID-19 Regulation](#)

[Cal/OSHA FAQ's](#)

[Cal/OSHA One-Page Fact Sheet](#)

[Cal/OSHA News Release](#)

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**www.mca-ca.org  
(916) 966-7666**

