

January 25, 2022

## A MEMBER ASKED...

### Do I Have to Pay Employees to Stay Home Due to COVID?

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A. It depends. COVID exclusion pay *due to workplace exposure* is required by the [Cal/OSHA COVID-19 Emergency Temporary Standard \(ETS\)](#) *unless*:

1. the employee was working remotely during the COVID exposure,
2. the employee received Disability or Work Comp during the exclusion period  
or
3. you, the employer, can prove the exposure was not work-related.

The current exclusion periods are 5 days or 10 days depending on circumstances. Isolation periods for positive COVID-19 cases are highlighted below:

- **Five-Day Isolation:** An employee can return to the workplace after at least five days if:
  - The employee is no longer symptomatic *or* their symptoms are resolving; *and*
  - The employee tests negative using a specimen collected on day five or later.
- **Ten-Day Isolation:** If an employee is unable or chooses not to test, they may return to the workplace after day 10 if:
  - The employee's symptoms are not present or resolving.

Employers must also provide paid time for employees to obtain COVID testing under certain conditions including being a “close contact” and being part of an “exposed group” as defined in the ETS.

**IMPORTANT!** Cal/OSHA ETS exclusion pay is not to be confused with the [California COVID-19 Supplemental Paid Leave which expired September 30, 2021](#).

The Cal/OSHA ETS is in effect until April 14, 2022.

There is a good chance the ETS will be extended beyond the current April expiration.

**BREAKING NEWS!** [Governor Newsom announced today](#), January 25, that a deal is in the works to reinstate Supplemental Paid Sick Leave retroactively from January 1, 2022 through September 30, 2022. A vote to finalize this agreement could come within two weeks. Stay tuned!

**Next question: Why two different isolation periods?**

A. Governor Newsom issued [Executive Order N-84-20](#) stipulating that California

Department of Public Health (CDPH) or local health official isolation/quarantine recommendations override Cal/OSHA's ETS *if* Cal/OSHA's isolation/quarantine periods are longer than CDPH or local health guidelines. So, while the Cal/OSHA ETS minimum exclusion period is 10 days, the CDPH provides a 5-day option – again, depending on the circumstances.

### Final question: Are there any exceptions?

**A.** Yes. The most recently updated Cal/OSHA ETS, effective January 14, 2022, states that asymptomatic, fully-vaccinated employees, that test negative within 3- 5 days of last exposure to a case do not need to be excluded *if* they wear a face covering and maintain six feet of distance from others at the workplace for 10 days following the last date of close contact.

The 10-day masking and distancing requirement increases to 14 days for asymptomatic, fully-vaccinated employees that do not test. In either case, if employees develop symptoms, they must be excluded from the workplace pending a test result.

Employers should also review all union agreements and any recent addenda or changes for waivers of California statutory rights by way of negotiation/side agreement.

### In conclusion:

COVID workplace protocols are complex and rapidly-evolving (anyone have whiplash yet?!). MCAC will continue to report on developments and we encourage employers to go straight to the source for the *most current* information to ensure compliance each time a situation arises in your workplace...and keep your attorney on speed dial.

The above information constitutes general guidelines. Each employee situation is different and should be individually analyzed.

A list of key resources is provided below.

## RESOURCES

Fact Sheet: [What Employers and Workers Need to Know About COVID-19 Isolation and Quarantine – January 19, 2022](#)

### [Cal/OSHA FAQ's](#)

- Exclusion Periods and Pay - Pages 15-17
- CDPH vs Cal/OSHA ETS Isolation Periods - Pages 19-21

[Cal/OSHA COVID-19 REGULATION](#) (aka Emergency Temporary Standard or ETS)

## BACKGROUND

[Cal/OSHA Revised COVID-19 Standard to be Effective January 14, 2022](#) - MCAC 4Q 2021 Newsletter 12/30/21

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