

California Implements New COVID-19 Emergency Temporary Standards Now in Effect

Labor & Employment Law Update

on December 4, 2020

The California Occupational Health & Safety Standards Board adopted rules implementing Emergency Temporary Standards (ETS) that went into effect on November 30, 2020. The ETS regulations apply to all employers, employees, and to all places of employment except the following:

- Workplaces where there is only one employee who does not have contact with other people
- Remote employees
- Employees covered by California's Aerosol Transmissible Diseases regulation

In an effort to assist all impacted by the ETS regulations, California's Department of Industrial Relations has issued a set of *Frequently Asked Questions* addressing the mandated prevention program requirements that include workforce communication, "outbreak" and "major outbreak" handling procedures, training and record keeping and reporting as well as all other standards in the regulations intended to further control and minimize the spread of the virus in the workplace.

The FAQs address regulation amendments that require employers to maintain written COVID-19 prevention program and training programs. The prevention and training program elements must include internal reporting policies on employee infections, potential exposures, the now familiar physical distancing, face covering and other preventive measures as well as other mitigating risk protocols (Plexiglas, cleaning procedures, PPE).

The FAQs also outline the regulation procedures applicable to COVID-19 infections and/or outbreaks. In non-outbreak situations, employers must notify employees about exposures and positive tests while preserving personal identifying information, offer testing at no cost to the employees, ensure that employees infected/exposed are excluded from work while following applicable requirements regarding benefits and pay, and investigate and address any exposure hazards. Employers are also required to maintain record keeping and reporting requirements with the local department of health.

In outbreak situations, and in addition to requirements summarized above, employers must conduct immediate COVID-19 testing at no cost to the employees and repeat a subsequent test a week later. Any positive tests or exposed employees must then be excluded from work. Employers are also required to continue testing (at least weekly) until the workplace no longer qualifies as an outbreak. An “outbreak” is defined as 3 or more cases within a 14 day period or as a local health department may so determine.

In the case of a “major outbreak”, defined as 20 or more cases within a 30-day period, additional measures are triggered. These include twice a week testing, ventilation changes and implementation (to at least MERV-13 rating), determination for the need to implement a respiratory protection program if one is not already in place or changes/improvements to an existing program, and most significantly, consideration of a full or partial shutdown of operations.

While not specifically addressed in the FAQs, the regulations also add new sections on employer-provided housing and transportation. As it relates to housing, which does not apply to emergency response operations such as fire, rescue and utilities, communication and medical support activities, employers are required to prioritize housing assignments, impose physical distancing and face covering requirements as well as screening, testing, isolation and cleaning procedures. Similar requirements are imposed regarding employer-provided transportation.

Employers are encouraged to review all requirements imposed by these Emergency Temporary Standard regulations, to implement compliance programs as required therein, and to update internal policies and procedures that comply with these regulations. We will continue to monitor any FAQs expansion and new information.

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