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LEGAL UPDATE

June 10, 2022

To: Superintendents/Presidents/Chancellors, Member Community College Districts

From: Jennifer Henry, Associate General Counsel *JH*

Subject: Cal/OSHA Extends and Revises Emergency Temporary Standards
Memo No. 12-2022(CC)

On April 21, 2022, Cal/OSHA readopted the COVID-19 Prevention Emergency Temporary Standards (“ETS”) for a third time. The revised ETS took effect on May 6, 2022, and are set to expire on December 31, 2022. They apply to most employers including local educational agencies (“LEAs”).¹

Continuing Cal/OSHA ETS That Remain Unchanged:

- Employers still must have a written COVID-19 Prevention Program (“CPP”) that addresses employee exposures, policies to correct unsafe conditions, and allowing time for cleaning. It should be revised to reflect the below changes: https://www.dir.ca.gov/dosh/dosh_publications/ CPP.doc.
- Employers must continue providing training to employees about COVID-19.
- Employers are to continue to follow CDPH guidance regarding face coverings. Currently CDPH strongly recommends that masks are worn in all indoor public settings, regardless of vaccine status.²
- Employers must continue to notify employees, union representatives and other workers of a workplace COVID-19 exposure within one business day.
- If an employee is excluded due to a workplace exposure, they must still receive continued pay and benefits while excluded.³ Employers may use employee’s sick leave for this purpose, but where sick leave has been exhausted,

¹ Link to text: <https://www.dir.ca.gov/dosh/coronavirus/ETS.html>.

² <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/guidance-for-face-coverings.aspx>.

³ See 8 CCR 3205 § 3205(c)(9)(C). Note that Cal/OSHA’s “exclusion pay” should not be confused with California’s Supplemental Paid Sick Leave that requires up to 80 hours of supplemental paid sick leave for various COVID-19 reasons, which was renewed January 1, 2022 through September 20, 2022. See our Legal Update on SPSL: <https://sclscal.org/legal-update-memo-no-08-2022-revised-new-2022-supplemental-paid-sick-leave-for-qualifying-reasons-and-supplemental-paid-sick-leave-based-on-positive-covid-19-test-k-12/>.



the employer must continue the employee's pay at their regular rate. There are two exceptions to this if: (1) the employee received disability payments or was covered by workers' compensation and received temporary disability; and (2) the employee did not acquire COVID-19 in the workplace.⁴

ETS changes that went into effect on May 6, 2022:

Face coverings:

- No longer required indoors. Now only mandatory when CDPH requires their use: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/guidance-for-face-coverings.aspx>.
- The requirement that face coverings not let light pass through when held up to a light source has been deleted.
- Employers must provide face coverings to any employee who requests them, regardless of vaccination status.

Testing and Exclusion:

- When an employee has symptoms, regardless of whether related to a work exposure, employers are required to make COVID-19 testing available at no cost and paid time off for both unvaccinated and vaccinated employees. COVID-19 testing must be available to employees who had a close contact in the workplace. Tests approved by the United States Food and Drug Administration ("FDA") or that have an Emergency Use Authorization ("EUA") from the FDA to diagnose current infection with the SARS-CoV-2 virus may be used. These include both PCR and antigen tests. Over-the-counter tests may also be used.⁵
- After a close contact or a positive test, employees are to follow the CDPH isolation and quarantine guidelines.⁶ Regardless of 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.⁷
- In order to rely on at home test results, a date/time stamped photo of the test result is sufficient.

Fully Vaccinated Exemption: The term "fully vaccinated" was deleted. All regulations now apply regardless of vaccination status.

Cleaning, Distancing, Partitions: The ETS eliminated physical distancing and physical partition requirements, except during outbreaks.⁸ It also eliminated its prior cleaning and disinfecting procedures, except as provided for in the CPP.

⁴ 8 CCR 3205(c)(9)(D).

⁵ <https://www.dir.ca.gov/dosh/coronavirus/covid19faqs.html#testing>.

⁶ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Guidance-on-Isolation-and-Quarantine-for-COVID-19-Contact-Tracing.aspx>.

⁷ https://www.dir.ca.gov/DOSH/dosh_publications/COVIDOnePageFS-04-21-2022.pdf.

⁸ Cal/OSHA defines an "outbreak" as three or more COVID-19 cases among employees in an exposed group (same work location or common work area) within a 14-day period.
<https://www.dir.ca.gov/dosh/coronavirus/covid19faqs.html#outbreaks>.



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FAQs: Cal-OSHA updated its FAQ about the revised regulations on May 26, 2022, which can be found here: <https://www.dir.ca.gov/dosh/coronavirus/COVID19FAQs.html>

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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