

Workplace Safety in the COVID Era

SESSION 3 | CALIFORNIA LABOR & EMPLOYMENT LAW UPDATE 2021 WEBINAR SERIES

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This area of the law is still fragmented by jurisdiction

- Federal
- State
- County
- City

Employer's Duty

- **Federal:** Each employer "shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees[.]" (29 U.S.C. § 654(a)(1).)
- **California:** "Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein." (Labor Code § 6400, subd. (a).)

COVID-19 Emergency Temporary Standards

- Title 8 of the California Code of Regulations, sections 3205 to 3205.4
- Administered and enforced by Cal/OSHA
- Effective November 30, 2020

Issues Addressed by Emergency Temporary Standards

- Written COVID-19 Prevention Programs
- Responding to workplace outbreaks
- COVID-19 Prevention in Employer-Provided Housing
- COVID-19 Prevention in Employer-Provided Transportation to and from Work

All employers must “establish, implement, and maintain” a COVID-19 Prevention Program, except:

- “Places of employment with one employee who does not have contact with other persons.”
- “Employees working from home.”
- Employers subject to the aerosol transmissible diseases standard, such as hospitals and skilled nursing facilities.

A COVID-19 Prevention Program must be in writing.

- Model COVID-19 Prevention Program
- <https://www.dir.ca.gov/dosh/coronavirus/ETS.html>

A COVID-19 Prevention Program must address:

1. System for communicating
2. Identification and evaluation of COVID-19 hazards
3. Investigating and responding to COVID-19 cases in the workplace
4. Correction of COVID-19 hazards
5. Training and instruction
6. Physical distancing
7. Face coverings
8. Other engineering controls, administrative controls, and personal protective equipment
9. Reporting, recordkeeping, and access
10. Exclusion of COVID-19 cases
11. Return to work criteria

8 CCR § 3205(c).

COVID-19 Outbreak

There is a specific regulatory protocol that employers must follow if a place of employment “has been identified by a local health department as the location of a COVID-19 outbreak or when there are three or more COVID-19 cases in an exposed workplace within a 14-day period.” 8 CCR 3205.1.

Responding to COVID-19 Outbreaks

- Testing
- Exclusion of COVID-19 cases
- Investigation of workplace COVID-19 illness
- COVID-19 hazard correction
- Notice
 - Employees
 - Local Health Department
- Air filters

COVID-19 Prevention in Employer-Provided Transportation to and from Work

1. Prioritize shared transportation assignments
2. Physical distancing and face coverings
3. Effective screening procedures prior to boarding
4. Cleaning and disinfecting
5. Ventilation
6. Hand hygiene

8 CCR § 3205.4

Notice of potential COVID-19 exposure

- Within one business day after learning of a potential workplace exposure to COVID-19, an employer must:
 - Provide written notice to employees/employee representatives and subcontractors of possible exposure
 - Provide information about COVID-19 related benefits
 - Notify employees/employee representatives of cleaning and disinfecting protocol that employer plans to implement

Employers should keep written notices for 3 years.

Workers' Compensation

- Expanded definition of “injury”
- Report to claims administrator
- Presumption of causation
- Exhaust paid sick leave benefits before temporary disability benefits

Mitigating Liability

- Follow applicable statute, regulations, and orders
- Record keeping

Frequently Asked Questions

- May an employer require employees to obtain the COVID-19 vaccine?
- May an employer take all employees' temperatures before allowing them to enter the workplace?
- May an employer require an employee to submit to a COVID-19 viral testing before permitting the employee to enter the workplace? Antibody testing?

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