



Cal/OSHA Rushes thru Emergency COVID Regulations

The California Occupational Safety and Health Standards Board unanimously passed the California Code of Regulations Title 8, Sections 3205, 3205.1, 3205.2, 3205.3, and 3205.4 on Nov 19, 2020. The regulation is an extensive, 21-page emergency regulation regarding the spread of COVID-19 in workplaces. It will drastically affect nearly every employer in California.

The proposed regulation has now been passed on to the Office of Administrative Law and will be in effect once the OAL approves. The Office of Administrative Law has 10 days to review the proposal and make a decision. It is anticipated that it will be approved and will become effective by the end of November.

The relevant elements of the standard have been summarized below. For the complete proposed regulation, please click on the hyperlink provided. <https://www.dir.ca.gov/oshsb/documents/COVID-19-Prevention-Emergency-txtbrdconsider.pdf>

Employers will be required to have a written COVID Prevention Program, which can be incorporated in the IIPP or be stand-alone. 3205 (c)

The program shall have procedures for.

- A communication system.
- Identification & evaluation of COVID-19 hazards
- Investigation & responding to COVID-19 hazards in the workplace
- Correction of COVID-19 hazards
- Training & instructions
- Physical distancing
- Face coverings
- Other engineering controls, administrative controls & PPE
- Reporting, recordkeeping & access
- Exclusion for COVID-19 cases
- Return to work criteria

Employers will be required to establish a system of communication to include: 3205 (c) 1

- Employee's ability to report possible COVID-19 exposures, and hazards without the fear of reprisal.
- Procedures and policies for accommodating employees with medical or other conditions that put them at increased risk of severe COVID-19 illness
- Provide information about COVID-19 testing
- Communicate information about COVID-19 hazards and the employer's COVID-19 policies and procedures to employees and to other employers, persons, and entities within or in contact with the employer's workplace.



- **Identification and Evaluation of COVID hazards. 3205 (c) 2**

Employers Must:

- Allow for employee and authorized employee representative participation in the identification and evaluation of COVID-19 hazards.
 - Develop and implement a process for screening employees for and responding to employees with COVID-19 symptoms.
 - Develop policies and procedures to respond effectively and immediately to individuals at the workplace who are a COVID-19 case to prevent or reduce the risk of transmission.
 - Conduct a workplace-specific identification of all interaction areas, activities, processes, equipment, and materials that could potentially expose employees to COVID-19 hazards.
 - For indoor locations, the employer shall evaluate how to maximize the quantity of outdoor air and whether it is possible to increase filtration efficiency to the highest level compatible with the existing ventilation system.
 - Review applicable orders and guidance from the State of California and the local health department related to COVID-19 hazards and prevention.
 - Evaluate existing COVID-19 prevention controls at the workplace and the need for different/additional controls.
 - Conduct periodic inspections as needed to identify unhealthy conditions, work practices, and work procedures related to COVID-19.
- **Investigation and Responding to COVID-19 cases in the workplace; 3205 (c) 3**
 - The employer shall have an effective procedure to investigate COVID-19 cases in the workplace.
 - The employer shall take the following action when there has been a COVID-19 case at the place of employment.
 1. Determine the day and time the COVID-19 case was last present and, to the extent possible, the date of the positive test(s) and/or diagnosis, and the date the case first had one or more symptoms, if any were experienced.
 2. Determine who may have had a COVID-19 exposure.
 3. Give notice of the potential COVID-19 exposure, within one business day, in a way that does not reveal any personal identifying information of the COVID-19 case, to the following.
 - a) All employees who may have had COVID-19 exposure and their authorized representatives.
 - b) Independent contractors and other employers present at the workplace during the high-risk exposure period.
 4. Offer COVID-19 testing at no cost to employees during their working hours.
 5. Investigate whether any workplace conditions could have contributed to the risk of COVID-19 exposure and what could be done to reduce exposure.
 - The employer shall ensure that all employee medical records required by this section



and sections 3205.1 through 3205.4 are kept confidential and are not disclosed or reported without the employee's express written consent to any person within or outside the workplace.

- **Correction of COVID-19 hazards 3205 (c) 4**

- Employers shall implement effective policies and/or procedures for correcting unsafe or unhealthy conditions, work practices, policies and procedures in a timely manner based on the severity of the hazard.

- **Training and instruction 3205 (c) 5**

To include:

- The employers COVID-19 policies and procedures.
- Information regarding COVID-19 related benefits to which the employee may be entitled under applicable federal, state, or local laws.
- The fact that COVID-19 is an infectious disease that can be spread through the air or contaminated objects.
- Methods of physical distancing and wearing face coverings.
- The fact that particles containing the virus can travel more than six feet, especially indoors, so physical distancing must be combined with other controls, including face coverings and hand hygiene, to be effective.
- The importance of frequent hand washing with soap and water for at least 20 seconds and using hand sanitizer when employees do not have immediate access to a sink or hand washing facility, and that hand sanitizer does not work if the hands are soiled.
- Proper use of face coverings
- COVID-19 symptoms, and the importance of not coming to work and obtaining a COVID-19 test if the employee has COVID-19 symptoms.

- **Physical distancing 3205 (c) 6**

- All employees shall be separated from other persons by at least six feet, except where an employer can demonstrate that six feet of separation is not possible, and except for momentary exposure while persons are in movement.
- When it is not possible to maintain a distance of at least six feet, individuals shall be as far apart as possible.

- **Face Coverings 3205 (c) 7**

- Employers shall provide face coverings and ensure they are worn by employees over the nose and mouth when indoors, when outdoors, and less than six feet away from another person, and where required by orders from the CDHP or local health department. Face shields are not a replacement for face coverings, although they may be worn together for additional protection.

Exceptions:



1. When an employee is alone in a room.
 2. While eating and drinking at the workplace, provided employees are at least six feet apart and outside air supply to the area, if indoors air has been maximized to the extent possible.
 3. Employees wearing respiratory protection in accordance with section 5144 or other title 8 safety orders.
 4. Employees who cannot wear face coverings due to a medical or mental health condition or disability, or who are hearing-impaired or communicating with a hearing impaired person. **(See alternative provisions in the regulation)**
 5. Specific task which cannot feasibly be performed with a face covering.
- **Other engineering controls, administrative controls and personal protective equipment. 3205 (c) 8**
 - At fixed work locations where it is not possible to maintain the physical distancing requirement at all times, the employer shall install cleanable solid partitions that effectively reduce aerosol transmission between the employee and other persons.
 - For buildings with mechanical or natural ventilation, or both, employers shall maximize the quantity of outside air provided to the extent feasible.
 - Employers shall implement cleaning and disinfecting procedures.
 - To protect employees from COVID-19 hazards, the employer shall evaluate its handwashing facilities.
 - Employers shall evaluate the need for personal protective equipment.
 - **Recording, Recordkeeping and Access 3205 (c) 9**

Responsibilities:

 - The employer shall report information about COVID-19 cases at the workplace to the local health department whenever required by law, and shall provide any related information requested by the local health department.
 - The employer shall report immediately to the Division any COVID-19-related serious illness or death, as defined under section 330 (h), of an employee occurring in a place of employment or in connection with any employment.
 - The employer shall maintain records of the steps taken to implement the written COVID-19 Prevention Program.
 - The written COVID-19 Prevention Program shall be made available at the workplace to employees, authorized employee representatives, and the Division immediately upon request.
 - The employer shall keep a record of and track all COVID-19 cases.
 - **Exclusion of COVID-19 Cases 3205 (c) 10**
 - Employers shall ensure that COVID-19 cases are excluded from the workplace until the return to work requirements of subsection (c) (11) are met.
 - Employers shall exclude employees with COVID-19 exposure from the workplace for 14 days



- after the last known COVID-19 exposure to a COVID-19 case.
- For employees excluded from work under subsection (c) (10) and otherwise able and available to work, employers shall continue and maintain an employee's earnings, seniority, and all other employee rights and benefits including the employee's right to their former job status, as if the employee had not been removed from their job. Employers may use employer-provided employee sick leave benefits for this purpose and consider benefit payments from public sources in determining how to maintain earnings, rights and benefits, where permitted by law and when not covered by workers' compensation.

(See complete standard for exceptions)

- **Return to work criteria 3205 (c) 11**

- COVID-19 cases with COVID-19 symptoms shall not return to work until:
 1. At least 24 hours have passed since a fever of 100.4 or higher has resolved without the use of fever-reducing medications;
 2. COVID-19 symptoms have improved; and
 3. At least 10 days have passed since COVID-19 symptoms first appeared.

COVID-19 cases who tested positive but never developed COVID-19 symptoms shall not return to work until a minimum of 10 days have passed since the date of specimen collection of their first positive COVID-19 test.

A negative COVID-19 test shall not be required for an employee to return to work.

If an order to isolate or quarantine an employee is issued by a local or state health official, the employee shall not return to work until the period of isolation or quarantine is completed or the order is lifted. If no period was specified, then the period shall be 10 days from the time the order to isolate was effective, or 14 days from the time the quarantine was effective.

If there are no violations of local or state health officer orders for isolation or quarantine, the Division may, upon request, allow employees to return to work on the basis that the removal of an employee would create undue risk to a community's health and safety. In such cases, the employer shall develop, implement, and maintain effective control measures to prevent transmission in the workplace including providing isolation for the employee at the workplace and, if isolation is not possible, the use of respiratory protection in the workplace

- **Multiple COVID-19 Infections and COVID-19 Outbreaks. 3205.1 (a)**

- Applies to a place of employment covered by section, 3205 if it 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.



- The section shall apply until there are no new COVID-19 cases detected in a workplace for a 14 day period.
- COVID-19 testing- The employer shall provide COVID-19 testing to all employees at the exposed workplace (**see definition in standard**) except for employees who were not present during the period of an outbreak identified by a local health department or the relevant 14-day period(s) under subsection (a) (**Scope**), as applicable. COVID testing shall be provided at no cost to employees during employees' working hours. COVID-19 testing shall consist of the following:
 - (A) Immediately upon being covered by this section, all employees in the exposed workplace shall be tested and then tested again one week later. Negative COVID-19 test results of employees with COVID-19 exposure shall not impact the duration of any quarantine period required by, or orders issued by, the local health department.
 - (B) After the first two COVID-19 tests required by (b)(2)(A), employers shall provide continuous COVID-19 testing of employees who remain at the workplace at least once per week, or more frequently if recommended by the local health department, until this section no longer applies pursuant to subsection (a)(2).
 - (C) Employers shall provide additional testing when deemed necessary by the Division through the Issuance of Order to Take Special Action, in accordance with title 8 section 332.3. (**See supplementary provisions of this section**)

Notifications to the local health department.

- (1) The employer shall contact the local health department immediately but no longer than 48 hours after the employer knows, or with diligent inquiry would have known, of three or more COVID-19 cases for guidance on preventing the further spread of COVID-19 within the workplace.
 - (2) The employer shall provide to the local health department the total number of COVID-19 cases and for each COVID-19 case, the name, contact information, occupation, workplace location, business address, the hospitalization and/or fatality status, and North American Industry Classification System code of the workplace of the COVID-19 case, and any other information requested by the local health department. The employer shall continue to give notice to the local health department of any subsequent COVID-19 cases at the workplace.
 - (3) Effective January 1, 2021, the employer shall provide all information to the local health department required by Labor Code section 6409.6.
- **Major COVID-19 outbreak 3205.2**
 - This section applies to any place of employment covered by section 3205 when there are 20 or more COVID-19 cases in an exposed workplace within a 30-day period.
 - This section shall apply until there are no new COVID-19 cases detected in a workplace for a 14-day period.
 - COVID-19 testing. Employers shall provide twice a week COVID-19 testing, or more frequently if recommended by the local health department, to all employees present at



the exposed workplace during the relevant 30-day period(s) and who remain at the workplace. COVID-19 testing shall be provided at no cost to employees during employees' working hours

- Exclusion of COVID-19 cases. Employers shall ensure COVID-19 cases and employees with COVID-19 exposure are excluded from the workplace in accordance with subsections 3205(c)(10) and (c)(11) and any relevant local health department orders
(See standard for additional requirements)

- **The proposal also includes COVID prevention procedures in employer-provided housing, such as labor camps, and employer-provided transportation to and from work. 3205.3(a) Housing and 3205.4 Transportation.**