



Effective immediately, California employers must comply with emergency COVID-19 regulation

By Benjamin Kim, Rachel Conn, Maritza Martin

On November 30, 2020, California's Office of Administrative Law ("OAL") adopted the emergency COVID-19 workplace safety regulation that has been the subject of much debate. The emergency temporary regulation goes into effect immediately and expires on October 2, 2021, according to the California Occupational Safety and Health Standards Board's ("Standards Board") website. The regulation applies to "all employees" and "places of employment" in California with very limited exceptions.

OAL adopted the [emergency regulation](#) text without changes, despite the submission of many written comments advocating for revisions.

Employers should review and familiarize themselves with the numerous requirements in the 21-page regulation. It requires that employers create a written program that includes the following elements:

- Communication to employees about the employer's COVID-19 prevention procedures;
- Identification, evaluation, and correction of COVID-19 hazards;
- Physical distancing of at least six feet unless it is not possible;
- Use of face coverings;
- Use of engineering controls, administrative controls, and personal protective equipment (PPE) as required to reduce transmission risk;
- Procedures to investigate and respond to COVID-19 cases in the workplace;
- COVID-19 training for employees;
- Testing for employees who are exposed to a COVID-19 case, and in the case of multiple infections or a major outbreak, implementation of regular workplace testing for employees in the exposed work areas;
- Exclusion of COVID-19 cases and exposed employees from the workplace until they are no longer an infection risk; and
- Records maintenance of COVID-19 cases and reporting of serious illnesses and multiple cases to Cal/OSHA and the local public health department.

Under the emergency regulation, each of the above elements has a laundry list of additional requirements, some of which — like the outbreak reporting requirements — appear to conflict with existing California laws, such as AB 685 and SB 1159. This apparent conflict may create issues with enforcement of the regulation, and provide arguments for employers to challenge it. The regulation includes additional provisions about outbreaks and employer-provided housing and transportation.

On December 1, 2020, Cal/OSHA published its much-anticipated FAQs, and a template COVID-19 Prevention Program, to clarify the regulation and provide practical guidance to employers for compliance with its obligations.

Cal/OSHA says they will continue to expand the [FAQs](#) on an ongoing basis to assist stakeholders in understanding the regulation. The agency also announced that it will hold a stakeholder meeting this month to further explain the regulation and answer questions. In the meantime, employers should take steps to implement a program that complies with the regulation immediately, and consult counsel for specific guidance on how its requirements apply to their industry.

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