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California releases proposed emergency COVID-19 workplace safety regulation

By Maritza Martin, Rachel Conn, and Benjamin Kim

California is on its way to joining Virginia, Oregon, and Michigan as the next state to implement its own occupational safety and health standard for novel coronavirus (“COVID-19”). In September 2020, the California Occupational Safety and Health Standards Board (“Standards Board”) unanimously approved a petition to establish an emergency workplace safety rule to protect workers that are exposed to COVID-19, but are not covered by Aerosol Transmissible Diseases standards (8 CCR section 5199). The Standards Board recently released the [proposed draft](#), which is up for vote on November 19, 2020—leaving very little time for public comment.

Worker advocates heavily petitioned for this move as the California Labor Code allows interested parties to propose new or revised regulations concerning occupational safety and health.

As expected, the proposed regulation as currently drafted will require employers, among other things, to:

- Incorporate a written COVID-19 prevention program into their Injury and Illness Prevention Program (“IIPP”). This requirement can also be met through a standalone policy;
- Create procedures alongside employees and their representatives to identify, evaluate, and control COVID-19;
- Investigate, respond, and notify employees of COVID-19 cases and potential exposure;
- Report COVID-19 cases to local health authorities;
- Exclude employees with COVID-19 exposure from the workplace for 14 days after the last known COVID-19 exposure to COVID-19—during this time, employers must continue to maintain an employee’s earnings, seniority, and all other employee rights and benefits.

Of particular note, the proposed regulation mentions return-to-work provisions for COVID-19-positive employees, requirements related to outbreaks in the workplace, and prevention procedures for employer-provided housing and transportation.

Among other issues, employers have pointed to the potential for duplicity, confusion, and burdensomeness resulting from the proposed standard. In essence, an emergency rule or standard could require all employers not subject to the ATD standard to have another written program similar to the IIPP that essentially does the same thing. Given the abundance of existing federal, state, and local guidance, well-meaning employers expressed the concern that these regulations might simply become another way to cite companies that are already trying their best to protect workers.

If the Standards Board adopts the proposal, then the Office of Administrative Law (“OAL”) will have ten (10) calendar days to review and make a decision on the proposed emergency regulation. If approved, OAL will file the emergency regulation with the Secretary of State, and the emergency regulation will become effective for 180 days, with possible extensions.

In terms of a more permanent rule, the Standards Board is also considering a second proposed standard and more permanent rule to protect workers from infectious diseases including novel pathogens like COVID-19.

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