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## California could be next state to adopt workplace safety rules for COVID-19

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In a much anticipated move, 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 coronavirus (“COVID-19”) but are not protected by Aerosol Transmissible Diseases standards (8 CCR sections 5199 and 5199.1).

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.

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

The [Petition](#) is asking the Standards Board to adopt new regulatory requirements that:

- Establish a framework requiring employers to create a written plan for employee protection (similar to the Injury and Illness Prevention Program “IIPP”);
- Create procedures to identify, evaluate, and control COVID-19 hazards;
- Establish a job hazard analysis that identifies modes of transmission in the workplace and adopt measures to minimize risk; and
- Institute employee training.

The Petition is not without controversy. While the Division of Occupational Safety and Health (“Division”) recommends approval of the Petition, the Standard Board’s staff itself does not believe further rulemaking is necessary as many of the regulatory additions are already found in existing Title 8 regulations. During the Standards Board meeting on September 17, many employers echoed similar sentiments.

Among other issues, employers 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 fear that these regulations might

simply become another way to cite companies that are already trying their best to protect workers. On the other hand, various workers and advocacy groups expressed urgency behind the need to protect workers who still remain largely exposed to COVID-19 and that these situations are exactly what emergency regulations are intended for.

Despite the Standards Board staff's opinion regarding the Petition, they are working with the Division to submit a proposal for an emergency regulation no later than November 19, 2020. In terms of the permanent rule, the Standards Board requested that the Division create a representative advisory committee once the COVID-19 pandemic subsides to consider the necessity of such a regulation when the time comes.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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