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After weeks of back and forth, revisions to the California Occupational Safety and Health COVID-19 Prevention Emergency Temporary Standard are finally in effect

By Rachel Conn and Maritza Martin

After weeks of uncertainty regarding revisions to the COVID-19 Prevention Emergency Temporary Standard (ETS), which has been in place since November 2020, the California Occupational Safety and Health Standards Board (Standards Board) adopted [new revisions](#) to the ETS that loosen safety restrictions for fully vaccinated individuals. In an unprecedented move, Governor Gavin Newsom issued an [executive order](#) that circumvents the required 10-day review period by the Office of Administrative Law, making the revisions effective immediately. The revisions to the ETS and the executive order come after immense pressure on the Standards Board and the Governor's Office to align with the most recent COVID-19 guidance by the [California Department of Public Health](#) (CDPH) and the [Centers for Disease Control and Prevention](#) (CDC).

Although many employers welcomed the ETS revisions, some of its provisions are vague and their interpretations uncertain. Fortunately, the California Division of Occupational Safety and Health (DOSH) has already released [FAQs](#) that offer additional guidance for employers and individuals.

Notable revisions to the ETS include:

- Employees who are fully vaccinated are not required to wear face coverings except where required by the CDPH or during outbreaks.
- Employers do not need to test employees who are fully vaccinated or exclude them from the workplace when they have had close contact with an infected person unless they are displaying symptoms.
- “Fully vaccinated” means “the employer has **documented** that the person received, at least 14 days prior, either the second dose in a two-dose COVID-19 vaccine series or a single-dose COVID-19 vaccine. Vaccines must be FDA approved, have an emergency use authorization from the FDA, or, for persons fully vaccinated outside the United States, be listed for emergency use by the World Health Organization (WHO).
- The [FAQs](#) clarify that employers have discretion to choose from several documentation options:

- Employees provide proof of vaccination (vaccine card, image of vaccine card, or health care document showing vaccination status) and the employer maintains a copy;
- Employees provide proof of vaccination, and the employer maintains a record of the employees who presented proof, but not of the vaccine record itself; or
- Employees self-attest to vaccination status, and the employer maintains a record of who self-attested.
- No face covering requirements outdoors (regardless of vaccination status).
- Employers must offer testing at no cost to symptomatic unvaccinated employees during paid time regardless of whether there is a known exposure.
- Physical distancing requirements are eliminated effective immediately except during major outbreaks and regardless of vaccination status.
- Upon request, employers must provide unvaccinated employees with a respirator for voluntary use when working indoors or in vehicles. Employers must encourage their use and ensure that employees are provided with a respirator of the correct size. The respirators also must be in compliance with 8 CCR 5144(c)(2) (the voluntary use subsection of the Respiratory Protection Standard). This means, among other things, that the employer also must determine that (1) such respirator use will not in itself create a hazard, and (2) provide employees with Appendix D of the above-mentioned standard. In addition, employees must be informed of this right and trained on how to properly wear the respirator, how to perform a seal check according to the manufacturer's instructions each time a respirator is worn, and that facial hair might interfere with a seal. The FAQs provide additional guidance on this requirement. DOSH has stated that they plan on releasing a video regarding voluntary respiratory use.
- Sharing prohibitions are lifted in lieu of better cleaning techniques.
- Ventilation systems should maximize outdoor air.

As always, employers should become familiar with the newly adopted changes to the ETS and consult with counsel if uncertain about how to implement said changes. In addition, employers should take the following steps:

- Update COVID-related policies, procedures, and trainings;
- Develop a plan for enforcement;
- Ensure proper management and privacy protections for the documenting of employee vaccination status and related information; and
- Obtain respirators for voluntary use by unvaccinated employees. The FAQs include additional guidance on procurement.

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