

**Changes to Cal/OSHA
COVID-19 Regulations and
Why California Businesses
Should Be Concerned**

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SUMMARY

New regulations for how businesses must handle COVID-19 infections in the workplace went live on Feb 3, 2023 for all businesses located in the State of California for the next 2 years (minimum). These regulations place stringent guidelines on how a business addresses workplace hazards, employee training and recordkeeping. The requirements are most applicable and challenging to businesses that predominantly have in-person work settings.

INTRODUCTION

On February 3, 2023 the California Office of Administrative Law approved regulations replacing the California Occupational Safety and Health Administration Emergency Temporary Standards (Cal/OSHA ETS) which address how businesses are required to handle COVID-19 exposures in the workplace. These regulations include some of the same requirements found in the COVID-19 Prevention Emergency Temporary Standards (ETS), as well as new provisions aimed at making it easier for employers to provide consistent protections to workers and allow for flexibility if changes are made to guidance in the future from the California Department of Public Health.

These new regulations have varying levels of complexity depending on the location of the business, and the local ordinances in place in addition to the statewide regulations.

The purpose of this whitepaper is to summarize the most important aspects of these new regulations and provide some ideas and tools on how to best adhere to them.

These Non Emergency COVID-19 Prevention regulations are effective beginning February 3, 2023, and will remain in effect until February 3, 2025 with record-keeping required through February 3, 2026.

The changes include:

- 1 Employers are no longer required to maintain a standalone COVID-19 Prevention Plan**
- 2 Definition of Close Contact**
- 3 Definition of Infectious Period**
- 4 Specific, stringent notice guidance for advising employees about exposure to positive COVID-19 cases**
- 5 Guidance around required testing availability**
- 6 Provide face coverings when required by CDPH and provide respirators upon request**
- 7 Provide Employees with the information on benefits available**
- 8 Requirement to provide training**
- 9 Maintain effective methods to prevent transmission by improving ventilation**
- 10 Additional recordkeeping requirements**
- 11 Increased penalties for non-compliance**

1 Employers are no longer required to maintain a standalone COVID-19 Prevention Plan

Instead, employers must now address COVID-19 as a workplace hazard, and include their COVID-19 procedures to prevent this health hazard in their written Injury and Illness Prevention Program (IIPP) or in a separate document¹.

TIP: Do you have your IIPP in place? If not, we strongly advise you to develop and publish one ASAP. We have standardized forms if that is helpful.

2 The definition of close contact has been updated

The most important item of note is that the definition of close contact is now based on the size of the location. The regulations define “close contact” as follows².

- ✓ In indoor spaces of 400,000 or fewer cubic feet per floor, a close contact is defined as sharing the same indoor airspace as a COVID-19 case for a cumulative total of 15 minutes or more, over a 24-hour period, during a COVID-19 case’s infectious period.
- ✓ In large indoor spaces greater than 400,000 cubic feet per floor, a close contact is defined as being within 6 feet of the COVID-19 case for a cumulative total of 15 minutes or more, over a 24-hour period, during the COVID-19 case’s infectious period.
- ✓ Offices, suites, rooms, waiting areas, break or eating areas, bathrooms or other spaces that are separated by floor-to-ceiling walls are considered distinct indoor airspaces.

TIP: Do you have a way to track who is on site and who is not, and what airspaces people are located in? Developing this tool will help more accurately identify close contacts, and reduce the administrative burden associated with extensive contact tracing.

3 Infectious period has also been updated and defined as follows:

- ✓ For COVID-19 cases who are symptomatic, the infectious period is from two days before they first develop symptoms (symptom onset date is Day 0) through Days 5-10 after symptoms first appeared AND 24 hours have passed with no fever, without the use of fever-reducing medications, and symptoms have improved, **OR**
- ✓ For COVID-19 cases who test positive but never develop COVID-19 symptoms, the infectious period is from two days before the positive test date (the test collection date is Day 0) through Day 5 after the specimen for their first positive test for COVID-1 was collected.

TIP: Do you have a way to check and record health symptoms for those who are positive or who are close contacts? This will ensure isolation dates are correct and an accelerated return to office can be facilitated.

4 Notice of exposure requirements

Employees who have been exposed to COVID-19 in the workplace must be notified within one business day. It is now possible for employers to post the notification in a prominent place where employees routinely receive other workplace announcements, and on any existing employee portal used for sharing notices.

If employers choose to post the notice, it is subject to all of the requirements, which are quite lengthy, and beyond the scope of this white paper. The notice must be in English and the language understood by the majority of employees. Employers must keep a log of the dates the notice was posted at each worksite and retain those records for three years³. Other methods for notifying employees are also available, including but not limited to personal service, text, telephone calls and email.

5 Required testing availability

Following exposure to a positive COVID-19 case, an employer must:

- ✓ Offer testing at no cost and during paid time to employees who had a close contact at work. Ensuring that an employee does not incur costs would include paying employees' wages for their time to get tested, as well as travel time to and from the testing site. It would also include reimbursing employees for travel costs to the testing site (for example, mileage or public transportation costs).
- ✓ During an outbreak, offer testing to all employees within an exposed group, at least once a week, except for employees who were not at work during the relevant period. Employees who are not tested within 3-5 days after a close contact must be excluded from the workplace until the return to work requirements for COVID-19 cases are met⁴.
- ✓ During a major outbreak, offer testing twice per week, except for employees who were not at work during the relevant period. Employees in the exposed group who are not tested must be excluded from the workplace until the return-to-work requirements for COVID-19 cases are met⁴.
- ✓ Provide testing in a manner that ensures employee confidentiality. An over-the-counter (OTC) COVID-19 test may be both self-administered and self-read if verification of the results, such as a time and date stamped photograph of the result or an OTC test that uses digital reporting with time and date stamped results, is provided.
- ✓ Should an employee refuse to take the tests required by various provisions of the emergency regulations, the employer is not required to obtain a signed declination from employees who refuse to take a COVID-19 test offered by the employer. In the case of major outbreaks, employees in the exposed group who are not tested must be excluded from the workplace⁵, and follow the return to work requirements starting from the date that the outbreak begins⁶.

TIP: Do you have an automated and cost effective way to ship COVID tests to exposed employees homes? This will reduce the cost burden of additional paid time for facilitating testing and reduce the risk of outbreaks at the workplace.

6 Provide face coverings when required by CDPH and provide respirators upon request

Employers must provide face coverings and ensure they are worn when required by orders from the CDPH. An employer must evaluate the need for PPE, including gloves, eye protection, and respiratory protection. Upon request, provide respirators for voluntary use to all employees who are working indoors or in vehicles with more than one person.

- ✓ When respirators are provided for voluntary use, provide instructions, encourage their use, and ensure the respirator is the correct size for the employee. Employers are not required to have a written respiratory protection program or medically evaluate and fit test workers. The employer must ensure that the workers' use of a respirator will not create a hazard, and the employer must also provide respirator users with specific information and training⁷.
- ✓ Provide and ensure use of respiratory protection for employees exposed to procedures that aerosolize saliva or other potentially infectious materials, such as some dental procedures.

TIP: Do you have an automated way to know who should be wearing a respirator based on exposure rules or CDPH requirements?



7 The 2022 Supplemental Paid Sick Leave Law ended as of 12/31/2022

While the COVID-19 Prevention regulations do not require employers to pay employees while they are excluded from work, they do require employers to provide employees with information regarding COVID-19 related benefits they may be entitled to under federal, state, or local laws; their employer's leave policies; or leave guaranteed by contract. This may include Workers Comp if contracted at work, or Disability pay.



“Employers have a moral, ethical, and legal obligation to provide the safest possible environment in which their employees can work and function. Moreover, providing optimal health and safety conditions also leads to the best business outcomes.”

Soumi Eachempati, MD
Former Professor of Surgery and Public Health
Weill Cornell Medical College
CEO, CLEARED4 Inc.

CLEARED4 offers the only turnkey solution that handle all of these new and updated Cal/ OSHA requirements out-of-the-box. You can be up and running in just a few days. Our HIPAA-compliant solution reduces your operational burden by up to 80% and mitigates the risks of fines creating an immediate ROI.

8 Requirement to provide training⁹

The employer must provide employees effective training and instruction covering the employer's COVID-19 policies and procedures to protect employees from COVID-19 hazards:

- ✓ How to participate in the identification and evaluation of COVID-19 hazards in the workplace
- ✓ Information on benefits the employee may be entitled to receive
- ✓ Specific information on the nature of the COVID-19 virus and how it is transmitted
- ✓ How an employee may protect themselves
- ✓ The employer's policies for providing respirators, and the training required to wear them as well as information on 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
- ✓ Information on the employer's COVID-19 policies
- ✓ How to access COVID-19 testing and vaccination, and the fact that vaccination is effective at preventing COVID-19, protecting against both transmission and serious illness or death
- ✓ The conditions under which face coverings must be worn at the workplace and that employees can request face coverings from the employer at no cost

TIP: Do you have comprehensive training & education materials and process in place to ensure all employees understand the risks, rules and available support?

9 Maintain effective methods to prevent transmission by improving ventilation

- ✓ Employers must review CDPH and Cal/OSHA guidance regarding ventilation, including the CDPH’s “Interim Guidance for Ventilation, Filtration, and Air Quality in Indoor Environments”⁹.
- ✓ Develop, implement, and maintain effective methods to prevent transmission of COVID-19 by maximizing the quantity of outside air provided, filter circulated air through filters at least as protective as Minimum Efficiency Reporting Value (MERV)-13, or the highest level of filtration efficiency compatible with the existing mechanical ventilation system.
- ✓ Use High Efficiency Particulate Air (HEPA) filtration units in accordance with manufacturers’ recommendations in indoor areas occupied by employees for extended periods, where ventilation is inadequate to reduce the risk of COVID-19 transmission.

TIP: Do you have all your records stored securely, accessible in real-time and easily shareable if required by state or local departments. Records must be stored through at least Feb 3, 2026.

10 Additional recordkeeping requirements

An employer’s reporting and recordkeeping requirements include following state and local health department reporting requirements:

- ✓ Reporting serious occupational illnesses to Cal/OSHA, consistent with existing regulations.
- ✓ Maintaining records including inspection records, documentation of hazard corrections and training records based on employer size; making the written Injury and Illness Prevention Program, including COVID-19 policies and procedures, available upon request to Cal/OSHA, employees and employees’ authorized representatives.
- ✓ Recording and tracking all COVID-19 cases. This information must be provided to the local health department, Cal/OSHA, the Department of Public Health, and the National Institute for Occupational Safety and Health immediately upon request¹⁰.

11 Penalties

COVID-19 response has moved from an emergency measure to a workplace hazard. The State of California has increased the monetary penalties for failures to posting requirements (\$15,625), failures to abate (\$15,625), and willful or egregious violations (\$156,259)¹¹. All of these place a heavy burden on employers to make sure they are getting it right.

TIP: Given these large fines, there is a significant ROI to ensure that compliance is in place, and automated as much as possible for the long term.

CONCLUSION

On average a company will spend over 320 administrative hours per 1,000 employees to manage COVID compliance. This effort will likely double or triple during the next COVID wave costing \$50-100 per year, per employee on administration costs. In addition, self-insured companies with looser COVID compliance are seeing 5x higher COVID-related medical utilization and larger decreases in productivity.

Working together, we can help you reduce your administrative costs by over 80% using a combination of our automated compliance platform, and out-sourced managed services.

Contact us today at sales@cleared4.org for a free platform demonstration or COVID compliance consultation.

Sources

- 1 Department of Industrial Relations, Title 8, Section 3205(c), www.dir.ca.gov/title8/3205.html
- 2 State Public Health Officer Order of October 14, 2022, www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Beyond-Blueprint.aspx
- 3 California Labor Code section 6409.6 (Duties of employer when notified of potential exposure to COVID-19)
- 4 Guidance for Local Health Jurisdictions on Isolation and Quarantine of the General Public, www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Guidance-on-Isolation-and-Quarantine-for-COVID-19-Contact-Tracing.aspx
- 5 Department of Industrial Relations, Title 8, Section 3205.1(g)(1), www.dir.ca.gov/title8/3205.html
- 6 Department of Industrial Relations, Title 8, Subsection 3205(c)(5), www.dir.ca.gov/title8/3205.html
- 7 Department of Industrial Relations, Title 8, Section 5144, Appendix D, www.dir.ca.gov/title8/5144d.html
- 8 Department of Industrial Relations, Title 8, Subsection 3205(c)(5), www.dir.ca.gov/title8/3205.html
- 9 Interim Guidance for Ventilation, Filtration, and Air Quality in Indoor Environments, www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Interim-Guidance-for-Ventilation-Filtration-and-Air-Quality-in-Indoor-Environments.aspx
- 10 Department of Industrial Relations, Title 8, Section 3203(b), www.dir.ca.gov/title8/3205.html
- 11 Department of Industrial Relations, Title 8, Section 336, www.dir.ca.gov/title8/336.html

From pandemic response planning to disease management to real-time mass communication systems, CLEARED4 can customize a solution to meet the unique needs of each organization to protect against a wide variety of health crises. CLEARED4 has become the most trusted health verification platform for managing COVID-19 related safety and compliance.

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