

On June 17, 2021 Cal/OSHA Standards board voted to PASS the [revised COVID-19 Emergency Temporary Standard](#). Governor Newsom has signed executive order [N-09-21](#) putting the revised COVID-19 Emergency Temporary Standard in effect as of June 17, 2021.

§ 3205. COVID-19 Prevention Scope

This emergency temporary standard applies to all employees and places of employment with the following exceptions:

- Work locations with one employee who does not have contact with other persons.
- Employees working from home.
- Employees with occupational exposure as defined by section 5199, when covered by that section.
- Employee's teleworking from a location of the employee's choice, which is not under the control of the employer.

The scope of 3205 does not limit state or local health departments from more stringent mandates, or guidance.

Definitions

Below is a list of added or changed definitions:

“Close Contact” means being within six feet of a COVID-19 case for a cumulative total of 15 minutes or greater in any 24-hour period within or overlapping with the “high-risk exposure period” defined by this section. This definition applies regardless of the use of face coverings.

EXCEPTION: Employees have not had a close contact if they wore a respirator required by employer and used in compliance with section 5144, whenever they were within six feet of the COVID-19 case during the high-risk exposure period.

“Exposed group” means all employees at a work location, working area, or a common area at work, where an employee COVID-19 case was present at any time during the high-risk exposure period. A common area at work includes bathrooms, walkways, hallways, aisles, break or eating areas, and waiting areas. The following exceptions apply:

(A) For the purpose of determining the exposed group, a place where persons momentarily pass through while everyone is wearing face coverings, without congregating, is not a work location, working area, or a common area at work.

(B) If the COVID-19 case was part of a distinct group of employees who are not present at the workplace at the same time as other employees, for instance a work crew or shift that does not overlap with another work crew or shift, only employees within that distinct group are part of the exposed group.

(C) If the COVID-19 case visited a work location, working area, or a common area at work for less than 15 minutes during the high-risk exposure period, and all persons were wearing face coverings at the time the COVID-19 case was present, other people at the work location, working area, or common area are not part of the exposed group.

NOTE: An exposed group may include the employees of more than one employer. See Labor Code sections 6303 and 6304.1.

“Face covering” means a surgical mask, a medical procedure mask, a respirator worn voluntarily, or a tightly woven fabric or non-woven material of at least two layers. A face covering has no visible holes or openings and must cover the nose and mouth. A face covering does not include a scarf, ski mask, balaclava, bandana, turtleneck, collar, or single layer of fabric.

“Fully vaccinated” means the employer **has documentation** showing 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 or have an emergency use authorization from the FDA.

“Respirator” means a respiratory protection device approved by the National Institute for Occupational Safety and Health (NIOSH) to protect the wearer from particulate matter, such as an N95 filtering face piece respirator. *Please see page 5 below for further details.*

“Worksite,” for the limited purposes of COVID-19 prevention regulations only, means the building, store, facility, agricultural field, or other location where a COVID-19 case was present during the high-risk exposure period. It does not apply to buildings, floors, or other locations of the employer that a COVID-19 case did not enter. The term worksite is used for the purpose of notice requirements in subsections (c)(3)(B)3. And 4. only.

Notification Requirements

Within one business day of the time the employer knew or should have known of a COVID-19 case, the employer shall give written notice, in a form readily understandable by employees, that people at the worksite may have been exposed to COVID-19. The notice shall be written in a way that does not reveal any personal identifying information of the COVID-19 case. Written notice may include, but is not limited to, personal service, email, or text message if it can reasonably be anticipated to be received by the employee within one business day of sending. The notice shall include the disinfection plan required by Labor Code section 6409.6(a)(4). The notice must be sent to the following:

- All employees at the worksite during the high-risk exposure period. If the employer should reasonably know that an employee has not received the notice, or has limited literacy in the language used in the notice, the employer shall provide verbal notice, as soon as practicable, in a language understandable by the employee.
- Independent contractors and other employers at the worksite during the high-risk exposure period.
- Within one business day of the time the employer knew or should have known of the COVID-19 case, the employer shall provide the notice required by Labor Code section 6409.6(a)(2) and (c)

to the authorized representative of any employee at the worksite during the high-risk exposure period.

Training & Educations Requirements

Effective training is required to all employees. Trainings include:

- Employers COVID-19 policies and procedures, including how to participate in the identification and evaluation of COVID-19 hazards
- COVID-19 related benefits
- The fact that COVID-19 is an infectious disease, how it spreads, and how an infectious person may have no symptoms
- Any methods of physical distancing implemented by the employer, and the importance of face coverings.

When respirators are provided upon request for voluntary use in accordance with 5144(c)(2) training shall include:

- How to properly wear the respirator provided;
- How to perform a seal check according to the manufacturer's instructions each time a respirator is worn, and the fact that facial hair interferes with a seal.
- The importance of frequent hand washing with soap and water for at least 20 seconds and using hand sanitizer when employees do not have immediate access to a sink or hand washing facility, and that hand sanitizer does not work if the hands are soiled.
- Proper use of face coverings and the fact that face coverings are not respiratory protective equipment. COVID-19 is an airborne disease. N95s and more protective respirators protect the users from airborne disease while face coverings primarily protect people around the user.
- COVID-19 symptoms, the importance of not coming to work and obtaining a COVID-19 test if the employee has COVID-19 symptoms, and the importance of vaccination against COVID-19.
- 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.

Face Coverings

For all employees who **are not fully vaccinated**, employers shall provide face coverings and ensure they are worn when indoors, or in vehicles. Employers shall also provide face coverings and ensure they are worn by employees when required by orders from CDPH.

Employers shall provide face coverings and ensure they are worn by employees over the nose and mouth. **The following are exceptions to face coverings:**

- When an employee is alone in a room, or when all persons in a room are fully vaccinated and do not have COVID-19 symptoms.



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- While eating and drinking at the workplace, provided employees are at least six feet apart and outside air supply to the area, if indoors, has been maximized to the extent feasible.
- Employees wearing respirators required by the employer and used in compliance with section 5144.
- Employees who cannot wear face coverings due to a medical or mental health condition or disability, or who are hearing-impaired or communicating with a hearing-impaired person.
- Specific tasks which cannot feasibly be performed with a face covering. This exception is limited to the time period in which such tasks are actually being performed
- Employees who are fully vaccinated, when they are outdoors and do not have any COVID-19 symptoms

If an employee is exempted from wearing a face covering due to a medical condition, mental health condition, or disability shall wear an alternative such as a face shield with a drape on the bottom, if their condition permits it.

Any employees not wearing a face covering due to the below exceptions or utilizing an alternative method:

- Employees who cannot wear face coverings due to a medical or mental health condition or disability, or who are hearing-impaired or communicating with a hearing-impaired person.
- Specific tasks which cannot feasibly be performed with a face covering. This exception is limited to the time period in which such tasks are actually being performed

Shall be at least six feet apart from all other persons unless the unmasked employee is either fully vaccinated or tested weekly for COVID-19 during paid time at no cost to the employee.

When face coverings are not required by sections 3205 through 3205.4, employers shall provide face coverings to employees upon request, regardless of vaccination status.

Respirators

Upon request, employers shall provide respirators for voluntary use in compliance with subsection 5144(c)(2) to all employees who are not fully vaccinated and who are working indoors or in vehicles with more than one person. Whenever an employer makes respirators for voluntary use available, the employer shall encourage their use and shall ensure that employees are provided with a respirator of the correct size.

[Respirator Overview: CDC](#)

[Listed Manufacturers: CDC](#)

[N95 Respirator Mask FAQ: CDPH](#)

Physical Distancing

Employers can eliminate physical distancing and partitions/barriers. Physical distancing may be required in specific situations within multiple and major COVID-19 outbreak sections. See below.

Cleaning Procedures

Employers shall implement cleaning and disinfecting procedures, which require identifying and regularly cleaning frequently touched surfaces and objects. The employer shall inform employees and authorized employee representatives of cleaning and disinfection protocols, including the planned frequency and scope of cleaning and disinfecting.

Exclusion from work

The employer shall exclude COVID-19 cases and employees who had a close contact with the following exceptions:

- Employees who were fully vaccinated before the close contact and who do not develop COVID-19 symptoms; and
- COVID-19 cases who returned to work pursuant to subsection (c)(11)(A) or (B) and have remained free of COVID-19 symptoms, for 90 days after the initial onset of COVID-19 symptoms or, for COVID-19 cases who never developed COVID-19 symptoms, for 90 days after the first positive test.

Return to Work Criteria

COVID-19 cases with COVID-19 **symptoms** shall not return to work until:

- At least 24 hours have passed since a fever of 100.4 degrees Fahrenheit or higher has resolved without the use of fever-reducing medications; and
- COVID-19 symptoms have improved; and
- At least 10 days have passed since COVID-19 symptoms first appeared.

COVID-19 cases who tested positive but never developed COVID-19 symptoms shall not return to work until a minimum of 10 days have passed since the date of specimen collection of their first positive COVID-19 test. A COVID-19 test shall not be required for an employee to return to work once the above criteria is met.

A person who had **close contact** may return to work as follows:

- Persons who had a close contact but never developed any COVID-19 symptoms may return to work when 10 days have passed since the last known close contact.
- Persons who had a close contact and developed any COVID-19 symptom cannot return to work until the requirements for those who had symptoms have been met, unless all of the following are true:

- The person tested negative for COVID-19 using a polymerase chain reaction (PCR) COVID-19 test with specimen taken after the onset of symptoms; and
- At least 10 days have passed since the last known close contact; and
- The person has been symptom-free for at least 24 hours, without using fever reducing medications.

During critical staffing shortages, when there are not enough staff to provide safe patient care, essential critical infrastructure workers in the following categories may return after Day 7 from the date of last exposure if they have received a negative PCR COVID-19 test result from a specimen collected after Day 5:

- Health care workers who did not develop COVID-19 symptoms;
- Emergency response workers who did not develop COVID-19 symptoms; and
- Social service workers who did not develop COVID-19 symptoms and who work face to face with clients in child welfare or assisted living.

Exclusionary Pay

Employers shall continue and maintain an employee's earnings, wages, seniority, and all other employee rights and benefits, including the employee's right to their former job status, as if the employee had not been removed from their job. Employers may use employer-provided employee sick leave for this purpose to the extent permitted by law. Wages due under this subsection are subject to existing wage payment obligations and must be paid at the employee's regular rate of pay no later than the regular pay day for the pay period(s) in which the employee is excluded. Unpaid wages owed under this subsection are subject to enforcement through procedures available in existing law. If an employer determines that one of the exceptions below applies, it shall inform the employee of the denial and the applicable exception.

- Exclusionary pay does not apply where the employee received disability payments or was covered by workers compensations and received temporary disability.
- Exclusionary pay does not apply where the employer demonstrates the close contact was not work related.

Health Insurance Portability and Accountability Act of 1996 (HIPAA)

The Privacy Rule standards address the use and disclosure of individuals' health information (known as "protected health information") by entities subject to the Privacy Rule. These individuals and organizations are called "covered entities." The Privacy Rule also contains standards for individuals' rights to understand and control how their health information is used. A major goal of the Privacy Rule is to ensure that individuals' health information is properly protected while allowing the flow of health information needed to provide and promote high quality health care and to protect the public's health and well-being. The Privacy Rule strikes a balance that permits important uses of information while protecting the privacy of people who seek care and healing. [Health Insurance Portability and Accountability Act of 1996 \(HIPAA\)](#)

California Consumer Privacy Act (CCPA)

The [California Consumer Privacy Act of 2018](#) (CCPA) gives consumers more control over the personal information that businesses collect about them and the [CCPA regulations](#) provide guidance on how to implement the law. This landmark law secures new privacy rights for California consumers, including:

- The [right to know](#) about the personal information a business collects about them and how it is used and shared;
- The [right to delete](#) personal information collected from them (with some exceptions);
- The [right to opt-out](#) of the sale of their personal information; and
- The [right to non-discrimination](#) for exercising their CCPA rights.

California Consumer Privacy Act (CCPA) FAQ

Vaccines

1. **Q: When is an employee considered vaccinated under the ETS?**

A: An employee is considered fully vaccinated if the employer has documented that the employee 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.

2. **Q: What COVID-19 vaccines are acceptable under the ETS?**

A: 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).

3. **Q: Must the ETS still be followed for vaccinated persons?**

A: Yes, some of the requirements of the ETS must still be followed by vaccinated employees, as discussed in the Face Covering, Testing, and Outbreak sections of this FAQ.

4. **Q: May an employer require employees to submit proof of their being “fully vaccinated”?**

A: Yes. As explained by the Department of Fair Employment and Housing, https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2020/03/DFEH-Employment-Information-on-COVID-19-FAQ_ENG.pdf because the reasons that any given employee or applicant is not vaccinated may or may not be related to disability or religious creed, simply asking employees or applicants for proof of vaccination is not a disability-related inquiry, religious creed-related inquiry, or a medical examination, employers may wish to instruct their employees or applicants to omit any medical information from such documentation. Any record of employee or applicant vaccination must be maintained as a confidential medical record. Under the ETS, an employer is not obligated to require employees to submit proof of being fully vaccinated.

5. **Q: May an employer require employees to be vaccinated against COVID-19?**

A: This is an issue outside the scope of the ETS. For guidance, employers may wish to refer to information provided by the federal Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing at the following webpages. Both of these “FAQ” resources address this question.

EEOC FAQ’s regarding COVID-19: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

DFEH FAQs regarding COVID-19: https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2020/03/DFEH-Employment-Information-on-COVID-19-FAQ_ENG.pdf

6. **Q: What is the employer required to do if it does not want to ask employees whether they are vaccinated?**

A: If the employer does not wish to ask about and document the vaccination status of their employees, the employer must treat all employees as unvaccinated.

7. **Q: After asking about an employees’ vaccination status, how can an employer document that an employee is “fully vaccinated”?**

A: An employer is not compelled to use any specific method of documenting their employees’ vaccination status, though whichever method is used, the information must be kept confidential. Acceptable options include:

- **Employees provide proof of vaccination (vaccine card, image of vaccine card or health care document showing vaccination status) and employer maintains a copy.**
- **Employees provide proof of vaccination. The employer maintains a record of the employees who presented proof, but not the vaccine record itself.**
- **Employees self-attest to vaccination status and employer maintains a record of who self-attests.**

Nothing in the ETS prevents an employer from treating all employees as unvaccinated and taking the most protective steps under the ETS (such as requiring all employees to wear a face covering) instead of having a documentation process.

8. **Q: How long are employers required to maintain documentation of employee vaccination status?**

A: Vaccination records created by the employer under the ETS need to be maintained for the length of time necessary to establish compliance with the regulation, including during any Cal/OSHA investigation or appeal of a citation.

In order to encourage documentation using vaccination records, Cal/OSHA has determined that it would not effectuate the purposes of the Labor Code to subject such records to the thirty (30) year record retention requirements that apply to some medical records.



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Additional State Resources

- [Updated Cal/OSHA FAQs](#)
- [Guidance For The Use of Face Coverings](#)
- [Cal/OSHA N95 Vendor List](#)
- [California Department of Public Health's interim guidance for ventilation, filtration, and air quality in indoor environments](#)