



Cal/OSHA Emergency Regulation FAQ¹

Disclaimer: AGC is not engaged in rendering legal, investment, business or insurance counseling through this publication. No statement is to be construed as legal, investment, business or insurance advice. AGC encourages readers to consult their legal counsel with regard to the issues discussed herein and application to their particular circumstances. AGC of California will continue to update this document as more clarification becomes available from Cal/OSHA. Please continue to check AGC's COVID-19 Resources webpage to stay on top of the latest information.

Last Updated: December 17, 2020

1. Language is unclear for the construction industry; how do I comply?

To help you understand and remain in compliance with the new Cal/OSHA Emergency Regulation, AGC of California's Safety & Health Council prepared a suite of resources to support contractors. Visit our COVID-19 resource page [here](#) to access the new tools and resources.

2. Can an exposed employee return to work early if they test negative after, say, five days? Or will that individual have to isolate/quarantine for 14 days?

The Cal/OSHA standard section 11 (a) – (d) "return to work criteria" specifies exclusion from work by the employer. Individuals who test positive for COVID-19 and have symptoms shall not return to work until:

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

Those that tested positive and were asymptomatic must be excluded from work for a minimum of 10 days after specimen collection.

¹ All information and language within is pulled from Cal/OSHA ETS:
<https://www.dir.ca.gov/oshsb/documents/COVID-19-Prevention-Emergency-apprvdtxt.pdf>



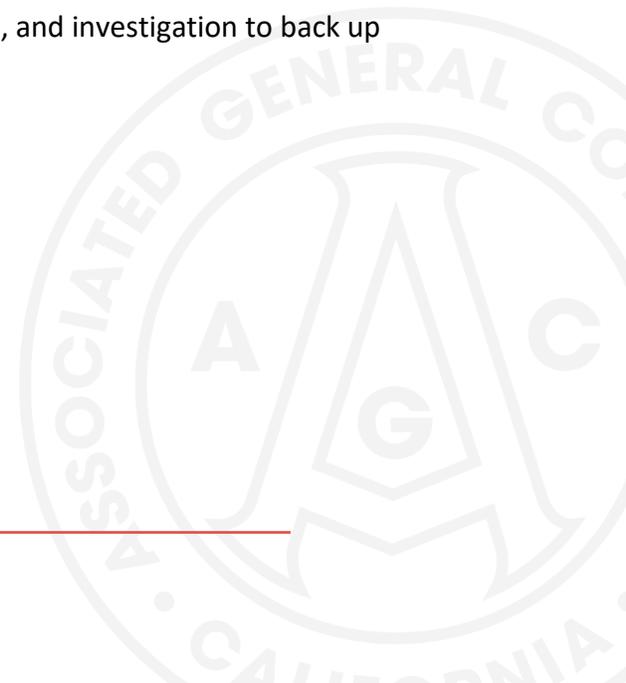
3. **Would offering free county testing satisfy the requirement of an employer to “offer” or “provide” COVID-19 testing in the event of an exposure or outbreak on a jobsite?**

Employers are required to provide COVID-19 testing at no cost to employees, and be made available during employee working hours, to all those who had potential COVID-19 exposure in the workplace. This is also true in the event of an outbreak. Additionally, employers must provide employees with information on benefits described in the regulations subsections (c)(5)(B) and (c)(10)(C). View sections 3205.1 & 3205.1 Outbreaks in the [emergency regulation](#) to see exact language.

4. **Please clarify what testing "all" after outbreak means. Is this just individuals found to be in the exposed areas after contact tracing? Or does this include all who could have gone into those areas even if not identified through contact tracing?**

The standard states “the employer shall provide COVID-19 testing to all employees at the “exposed workplace” except for employees who were not present during the period of an outbreak.” To understand what **all** means AGC refers to the definition of “**exposed workplace**” and “**exposed worksite**” defined in labor code section 6409.6(d)(5).

We suggest incorporating a logistics plan into your COVID-19 prevention plan. Within that logistics plan you will be able to differentiate your “worksite” more clearly. If you have two buildings, or one building and then site work, you will be able to identify “worksite A” and “worksite B” and track who is present in either section. In the case of 3 or more positive cases, through contact tracing you will be able to determine which “worksite” was exposed. If two individuals tested positive in “worksite A” and one in “worksite B” but personnel do not enter one or the other, then you have not met the criteria under section 3205.1 “Multiple COVID-19 Infections and COVID-19 Outbreaks.” The important take away is to have the documentation, and investigation to back up your decision-making process.





5. For outbreak purposes, the emergency regulation says “workplace.” Is this different than work site? Can we get a clarification of a workplace?

The definition of “workplace” in the Cal/OSHA standard is a broad definition which is not clear for the construction industry. The standard refers to labor code section 6409.6(d)(5) “worksites.” This is defined as:

The “building, store, facility, agricultural field, or other location where a worker worked during the infectious period. [The term ‘worksites’] does not apply to buildings, floors, or other locations of the employer that a qualified individual did not enter. In a multi-worksites environment, the employer need only notify employees who were at the same worksites as the qualified individual.”

You will be able to further define your “worksites” in a multi-employer situation through logistical planning. This is where you would define “worksites A” and “worksites B” and track subcontractors/personnel within those groups. This will help define the “exposed workplace/worksites” within your construction project.

6. Is any employee identified to fall under Group #1 (contact tracing) subject to automatic quarantine?

Group one (1) of contact tracing refers back to “COVID-19 Exposure” defined in this definition:

“COVID-19 exposure” 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.”

Those who have COVID-19 exposure are at high-risk of contracting COVID-19. Through your investigation process you should have documentation to back up decision making. As good faith employers, to help mitigate further exposure on-site, best practice will be to have category one quarantine or isolate while following back to work criteria.



7. How do we list a confirmed case on the OSHA 300 log without hospitalization?

The employer shall keep COVID-19 cases on a separate log with the employee's name, contact information, occupation, location where the employee worked, the date of the last day at the workplace, and the date of a positive COVID-19 test. Medical information shall be kept confidential.

8. Would a weekly rotation eliminate the exposure of Group B if the outbreak happens in the week of Group A?

Yes, but it would depend on the number of positive cases in either Group A or Group B. If Group A has three positive cases, you would meet the criteria under section 3205.1 "Multiple COVID-19 Infections and COVID-19 Outbreaks." This would require testing only for Group A. Group B would not have been present during the "Exposed Workplace."

While this is great administrative control to mitigate exposure to COVID-19, please make sure to document hazard correction after a positive case. Daily and weekly cleaning and disinfecting procedures, particularly between weekly group changes, should be in place to secure frequently touched surfaces.

9. If our employees report they've had contact with someone (outside of work) who has tested positive or is ill, does that mean our crew has been exposed?

To determine further exposure to workers, on-site contact tracing should be conducted in an investigation process. Ask questions such as:

- When was the individual exposed to COVID-19?
- When was the last time that individual was on-site?
- Where was that individual working?
- What personnel, if any, were working near them?
- Were they in "close contact" with any personnel?

As best practice, individuals who have had "COVID-19 Exposure" whether work related, or not, should be excluded from work until isolation period or quarantine period has been met under "return to work criteria."



10. Can an N95 or KN95 be worn for work, which requires less than 6' exposure, such as a boom or scissor lift?

Please remember the definition of “COVID-19 Exposure” applies regardless of the use of face coverings. While N95 and KN95 masks are a better source of protection, it is important to understand the difference between the two and how COVID-19 can be transmitted.

- ²**N95** masks are a filtering face piece respirator (FFR). The Federal Code of Regulations defines a FFR to be a negative pressure particulate respirator with a filter as an integral part of the face piece. An N95 means the mask has been rated to filter at least 95 percent of airborne particles. Established and approved by the National Institute for Occupational Safety and Health (NIOSH.)
- ³**KN95** is manufactured and assessed in China and not NIOSH. The CDC and NIOSH understand the shortage of N95 and have established the International Respirator Assessment as a point of use assessment. KN95 masks and China have similar performance requirements, although, NIOSH does not have knowledge about sustained manufacturer quality system and product quality control.

11. How is COVID-19 transmitted?

⁴COVID-19 spreads through respiratory droplets or small particles, such as those in aerosols or produced when an infected person coughs, sneezes, sings, talks, or breathes. These particles can be inhaled into the nose, mouth, airways, and lungs and cause infection. This is thought to be the main way the virus spreads.

Droplets can also land on surfaces and objects and be transferred by touch. A person may get COVID-19 by touching the surface or object that has the virus on it and then touching their own mouth, nose, or eyes. Spread from touching surfaces is not thought to be the main way the virus spreads.

Best practice for work performed within 6' is to utilize face coverings, gloves, and a face shield. In order to help with contact tracing in an investigation, we suggest having a close proximity form for crews to fill out before work is being performed within 6'.

² <https://oklahoma.gov/covid19/what-you-should-know/kn95s.html>
<https://www.cdc.gov/niosh/npptl/usernotices/counterfeitResp.html>

³ <https://oklahoma.gov/covid19/what-you-should-know/kn95s.html>
<https://www.cdc.gov/niosh/npptl/usernotices/counterfeitResp.html>

⁴ <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#:~:text=The%20virus%20that%20causes%20COVID,inhaled%20into%20the%20lungs.>



12. Will Cal/OSHA provide a log and tracking spreadsheet like they do with the 300? Are there HIPAA issues interviewing workers and contacts?

Cal/OSHA will not be issuing separate COVID-19 logs as of right now. It is up to the employer to track these cases while keeping confidentiality requirements. AGC of California offers [Contact Tracing forms](#), which will be a great way to track positive cases along with the investigation. The employer may also set up a separate log within their internal claims database to track these cases. This will comply with confidentiality requirements.

While interviewing personnel, only ask generic questions as it pertains to the positive case (without disclosing personal information). By asking questions about location, scope of work, time of day, etc. employers can determine exposure without disclosing the positive cases personal information.

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