



Cal/OSHA COVID-19 Emergency Temporary Standard: Updates

On December 16, 2021 Cal/OSHA Standards board voted to PASS the [2nd Readoption of the COVID-19 Emergency Temporary Standard](#). This Readoption will go into effect on January 14, 2022 and sunset on April 14, 2022.

Overview of Changes

- COVID-19 is no longer defined as an infectious disease and is now simple defined as “the disease caused by SARS-CoV-2
- Acceptable tests were expanded beyond viral tests to include home tests, over-the-counter tests, and point-of-care tests. The Regulation excludes both self-administered and self-read unless it is observed by the employer or an authorized telehealth proctor.
- The passed regulation requires face coverings to be made of “fabrics that do not let light pass through when held up to a light source” and be a “solid piece of material without slits, visible holes, or punctures [that] fit[s] snugly over the nose, mouth, and chin.”
- The definition of “worksite” excludes remote work locations.
- The definition of the workplace was expanded to include employees who were “on the premises at the same worksite.”
- Employers are required to provide testing to vaccinated workers who have close contact in the workplace. Prior to the 2nd readoption, covered employers do not have to offer testing to vaccinated workers.
- Exclusion requirements do not apply to employees who wear face coverings and maintain 6 feet of distance from others at the workplace for 14 days following the last date of close contact. This includes vaccinated workers who do not develop symptoms after an exposure.
- Return-to-work requirements for persons who had close contacts was modified for employees who wear face coverings, maintain six feet of distance, and take COVID-19 tests at least five days following the last date of close contact.
- The exception to the return-to-work criteria for employers with critical staffing shortages was omitted.
- Exceptions for fully vaccinated individuals with respects to the provision of face coverings, testing, and ventilation in housing was omitted.

§ 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 new or changed definitions:

“COVID-19” (Coronavirus Disease 2019) means the disease caused by SARS-CoV-2 (Severe acute respiratory syndrome coronavirus 2.)

“COVID-19 test” means a test for SARS-CoV-2 that is:

- Cleared, approved, or authorized, including in an Emergency Use Authorization (EUA), by the United States Food and Drug Administration (FDA) to detect current infection with the SARS-CoV-2 virus (e.g., a viral test);
- Administered in accordance with the authorized instructions; and
- Not both self-administered and self-read unless observed by the employer or an authorized telehealth proctor. Examples of tests that satisfy this requirement include tests with specimens that are processed by a laboratory (including home or on-site collected specimens which are processed either individually or as pooled specimens), proctored over-the-counter tests, point of care tests, and tests where specimen collection and processing is either done or observed by an employer.

“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 (i.e., fabrics that do not let light pass through when held up to a light source) that completely covers the nose and mouth and is secured to the head with ties, ear loops, or elastic bands that go behind the head. If gaiters are worn, they shall have two layers of fabric or be folded to make two layers. A face covering is a solid piece of material without slits, visible holes, or punctures, and must fit snugly over the nose, mouth, and chin with no large gaps on the outside of the face. A face covering does not include a scarf, ski mask, balaclava, bandana, turtleneck, collar, or single layer of fabric.

This definition includes clear face coverings or cloth face coverings with a clear plastic panel that, despite the non-cloth material allowing light to pass through, otherwise meet this definition and which may be used to facilitate communication with people who are deaf or hard-of-hearing or others who need to see a speaker’s mouth or facial expressions to understand speech or sign language respectively.

“Fully Vaccinated” The employer has documented:

- A person’s status two weeks after completing primary vaccination with a COVID-19 vaccine with, if applicable, at least the minimum recommended interval between doses in accordance with the _____ approval, authorization, or listing that is: _____



- Approved or authorized for emergency use by the FDA;
- Listed for emergency use by the World Health Organization (WHO); or
- Administered as part of a clinical trial at a U.S. site, if the recipient is documented to have primary vaccination with the active (not placebo) COVID-19 vaccine candidate, for which vaccine efficacy has been independently confirmed (e.g., by a data and safety monitoring board) or if the clinical trial participant at U.S. sites had received a COVID-19 vaccine that is neither approved nor authorized for use by FDA but is listed for emergency use by WHO; or
- A person's status two weeks after receiving the second dose of any combination of two doses of a COVID-19 vaccine that is approved or authorized by the FDA, or listed as a two-dose series by the WHO (i.e., a heterologous primary series of such vaccines, receiving doses of different COVID-19 vaccines as part of one primary series). The second dose of the series must not be received earlier than 17 days (21 days with a 4- day grace period) after the first dose.

“**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, locations where the worker worked by themselves without exposure to other employees, or to a worker's personal residence or alternative work location chosen by the worker when working remotely.

Written COVID-19 Prevention Program

Employers shall establish, implement, and maintain an effective, written COVID-19 Prevention Program, which may be integrated into the employer's Injury and Illness Prevention Program required by section 3203, or be maintained in a separate document. The written elements of a COVID-19 Prevention Program shall include:

- System for communicating. The employer shall do all of the following in a form readily understandable by employees:
- Ask employees to report to the employer, without fear of reprisal, COVID-19 symptoms, possible close contacts, and possible COVID-19 hazards at the workplace.
- Describe how employees with medical or other conditions that put them at increased risk of severe COVID-19 illness can request accommodations.
- Provide information about access to COVID-19 testing.
- Communicate information about COVID-19 hazards and the employer's COVID-19 policies and procedures to employees and to other employers, persons, and entities within or in contact with the employer's workplace.

Identification and evaluation of COVID-19 hazards

The employer shall allow for employee and authorized employee representative participation in the identification and evaluation of COVID-19 hazards.



The employer shall develop and implement a process for screening employees for and responding to employees with COVID-19 symptoms. The employer may ask employees to evaluate their own symptoms before reporting to work. If the employer conducts screening indoors at the workplace, the employer shall ensure that face coverings are used during screening by both screeners and employees regardless of vaccination status. If temperatures are measured, that non-contact thermometers are used.

The employer shall develop COVID-19 policies and procedures to respond effectively and immediately to individuals at the workplace who are a COVID-19 case to prevent or reduce the risk of transmission of COVID-19 in the workplace.

The employer shall conduct a workplace-specific identification of all interactions, areas, activities, processes, equipment, and materials that could potentially expose employees to COVID-19 hazards. Employers shall treat all persons, regardless of symptoms or negative COVID-19 test results, as potentially infectious.

- This shall include identification of places and times when people may congregate or come in contact with one another, regardless of whether employees are performing an assigned work task or not, for instance during meetings or trainings and including in and around entrances, bathrooms, hallways, aisles, walkways, elevators, break or eating areas, cool-down areas, and waiting areas.
- This shall include an evaluation of employees' potential workplace exposure to all persons at the workplace or who may enter the workplace, including coworkers, employees of other entities, members of the public, customers or clients, and independent contractors. Employers shall consider how employees and other persons enter, leave, and travel through the workplace, in addition to addressing stationary work.

For indoor locations, the employer shall evaluate how to maximize ventilation with outdoor air; the highest level of filtration efficiency compatible with the existing ventilation system; and whether the use of portable or mounted High Efficiency Particulate Air (HEPA) filtration units, or other air cleaning systems, would reduce the risk of COVID-19 transmission.

The employer shall conduct periodic inspections as needed to identify unhealthy conditions, work practices, and work procedures related to COVID-19 and to ensure compliance with employers' COVID-19 policies and procedures.

Investigating and responding to COVID-19 cases in the workplace.

Employers shall have an effective procedure to investigate COVID-19 cases in the workplace. This includes procedures for seeking information from employees regarding COVID-19 cases and close



contacts, COVID-19 test results, and onset of COVID-19 symptoms, and identifying and recording COVID-19 cases.

The employer shall take the following actions when there has been a COVID-19 case at the place of employment:

- Determine the day and time the COVID-19 case was last present and, to the extent possible, the date of the positive COVID-19 test(s) and/or diagnosis, and the date the COVID-19 case first had one or more COVID-19 symptoms, if any were experienced.
- Determine who may have had a close contact. This requires an evaluation of the activities of the COVID-19 case and all locations at the workplace, which may have been visited by the COVID-19 case during the high-risk exposure period.
- 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, and in the manner, the employer normally uses to communicate employment-related information. 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 cleaning and disinfection plan required by Labor Code section 6409.6(a)(4). The notice must be sent to the following:
 - All employees who were on the premises at the same worksite as the COVID-19 case 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 on the premises at the same worksite as the COVID-19 case during the high-risk exposure period.

Notification Requirements

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, if any, of the COVID-19 case and of any employee who had a close contact; and
- Provide the notice required by Labor Code section 6409.6(a)(4) to the authorized representative, if any, of any employee who was on the premises at the same worksite as the COVID-19 case during the high-risk exposure period.

Confidential Information

Personal identifying information of COVID-19 cases or persons with COVID-19 symptoms, and any employee medical records required shall be kept confidential unless disclosure is required or permitted by



law. Unredacted information on COVID-19 cases shall be provided to the local health department, CDPH, the Division, and NIOSH immediately upon request, and when required by law.

COVID-19 Testing

The employer shall make COVID-19 testing available at no cost, during paid time, to all employees of the employer who had a close contact in the workplace and provide them with the information on benefits.

Exceptions:

- COVID-19 cases who returned to work pursuant to subsection 3205(c)(10)(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 symptoms, for 90 days after the first positive test.

Training & Educations Requirements

Effective training is required to all employees. Trainings include:

- The employer's COVID-19 policies and procedures to protect employees from COVID-19 hazards, and how to participate in the identification and evaluation of COVID-19 hazards
- Information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state, or local laws. This includes any benefits available under legally mandated sick and vaccination leave, if applicable, workers' compensation law, local governmental requirements, the employer's own leave policies, leave guaranteed by contract.
- The fact that COVID-19 is an infectious disease that can be spread through the air when an infectious person talks or vocalizes, sneezes, coughs, or exhales; that COVID-19 may be transmitted when a person touches a contaminated object and then touches their eyes, nose, or mouth, although that is less common; and that an infectious person may have no symptoms.
- The fact that particles containing the virus can travel more than six feet, especially indoors, so physical distancing, face coverings, increased ventilation indoors, and respiratory protection decrease the spread of COVID-19, but are most effective when used in combination.
- The employer's policies for providing respirators, and the right of employees who are not fully vaccinated to request a respirator for voluntary use as stated in this section, without fear of retaliation and at no cost to employees. Whenever respirators are provided for voluntary use on:
 - 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 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 face coverings are additionally recommended outdoors for people who are not fully vaccinated if six feet of distance between people cannot be maintained. Employees can request face coverings from the employer at no cost to the employee and can wear them at work, regardless of vaccination status, without fear of retaliation.

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 provide face coverings and ensure they are worn by employees when required by orders from the CDPH.

Employers shall ensure that required face coverings are clean and undamaged, and that they are worn over the nose and mouth. Face shields are not a replacement for face coverings, although they may be worn together for additional protection.

Exceptions:

- When an employee is alone in a room or vehicle
- While eating or 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 exempted from wearing face coverings due to a medical condition, mental health condition, or disability shall wear an effective non-restrictive alternative, such as a face shield with a drape on the bottom, if their condition or disability permits it. If their condition or disability does not permit a non-restrictive alternative, the employee shall be at least six feet apart from all other persons and either fully vaccinated or tested at least weekly for COVID-19 during paid time and at no cost to the employee. Any employee not wearing a face covering, pursuant to the exception shall be at least six feet apart from all other persons unless the unmasked employee is either fully vaccinated or tested at least weekly for COVID-19 during paid time and at no cost to the employee.



No employer shall prevent any employee from wearing a face covering when not required by this section, unless it would create a safety hazard, such as interfering with the safe operation of equipment.

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](#)

Engineering Controls

For buildings with mechanical or natural ventilation, or both, employers shall maximize the quantity of outside air provided to the extent feasible, except when the United States Environmental Protection Agency (EPA) Air Quality Index is greater than 100 for any pollutant or if opening windows or maximizing outdoor air by other means would cause a hazard to employees, for instance from excessive heat or cold.

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

Employers shall exclude from the workplace employees who had a close contact until the return to work requirements are met, unless one of the exceptions applies:

- Employees who were fully vaccinated before the close contact and who do not develop COVID-19 symptoms do not need to be excluded if they wear a face covering and maintain six feet of distance from others at the workplace for 14 days following the last date of close contact.
- COVID-19 cases who returned to work and have remained free of COVID-19 symptoms **do not need to be excluded** from the workplace for 90 days after the initial onset of COVID-19 symptoms. This exception only applies if these employees wear a face covering and maintain six feet of distance from others while at the workplace for 14 days following the last date of close contact.



- COVID-19 cases who returned to work pursuant to subsection (c)(10)(B) who never developed COVID-19 symptoms do not need to be excluded from the workplace for 90 days after the first positive test. This exception only applies if these employees wear a face covering and maintain six feet of distance from others while at the workplace for 14 days following the last date of close contact.
- If the employer does not exclude an employee who had a close contact as permitted by exceptions shall provide the employee with information about any applicable precautions recommended by CDPH for persons with close contact.

CDPH Recommendations: [Responding to COVID 19 in the Workplace for Employers](#)

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 after 14 days have passed since the last known close contact unless either of the exceptions applies:
 - Ten days have passed since the last known close contact and the person wears a face covering and maintains six feet of distance from others while at the workplace for 14 days following the last date of close contact.
 - Seven days have passed since the last known close contact; the person tested negative for COVID-19 using a COVID-19 test with the specimen taken at least five days after the last known close contact; and the person wears a face covering and maintains six feet of distance from others while at the workplace for 14 days following the last date of close contact.
 - Persons who had a close contact and developed any COVID-19 symptom cannot return to work until the requirements listed above **for symptoms** are met.

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.

Multiple COVID-19 Outbreaks

This section applies where three or more **employee** COVID-19 cases are found within an exposed group. This section of the regulation will apply until there are no new COVID-19 cases detected in the exposed group for a 14-day period.

COVID-19 testing shall be made available to the exposed group as soon as it is known. Then once again, one week later, during employees paid time, except:

- Employees who were not present at the workplace during the relevant 14-day period(s)
- For COVID-19 cases who did not develop COVID-19 symptoms after returning to work. No testing is required for 90 days after the initial onset of COVID-19 symptoms or, for COVID-19 cases who never developed symptoms, 90 days after the first positive test.

Employees in the exposed group shall wear face coverings when indoors, or when outdoors and less than six feet from another person, unless one of the exceptions above applies.

Employers shall give notice to employees in the exposed group of their right to request a respirator for voluntary use, if they are not fully vaccinated.

Employers shall perform a review of potentially relevant COVID-19 policies, procedures, and controls, and implement changes as needed to prevent further spread of COVID-19. This review shall be updated every 30 days this section continues to apply.

Employers shall evaluate whether to implement physical distancing of at least six feet between persons or, where six feet of physical distancing is not feasible, the use of cleanable solid partitions of sufficient size to reduce COVID-19 transmission.

In buildings or structures with mechanical ventilation, employers shall filter recirculated air with Minimum Efficiency Reporting Value (MERV) 13 or higher efficiency filters if compatible with the ventilation system. If MERV-13 or higher filters are not compatible with the ventilation system, employers shall use filters



with the highest compatible filtering efficiency. Employers shall also evaluate whether portable or mounted High Efficiency Particulate Air (HEPA) filtration units or other air cleaning systems would reduce the risk of transmission and, if so, shall implement their use to the degree feasible.

Major COVID-19 Outbreaks

This section applies where 20 or more **employee** COVID-19 cases are found within an exposed group.

This section of the regulation will apply until there are fewer than three COVID-19 cases detected in the exposed group for a 14-day period.

Employers shall continue to comply with requirements as described in the multiple outbreak section, except that the COVID-19 testing shall be **twice a week** as well as the requirement to make available to all employees in the exposed group, regardless of vaccination status. In addition to the provisions under Multiple COVID-19 Outbreaks the employer shall take these actions:

- The employer is required to provide, encourage, and train employees on respirators for voluntary use. Any employees in the exposed group who are not wearing respirators required by the employer and used in compliance with section 5144 shall be separated from other persons by at least six feet, except where an employer can demonstrate that six feet of separation is not feasible, and except for momentary exposure while persons are in movement.
- At work stations where an employee in the exposed group is assigned to work for an extended period of time, such as cash registers, desks, and production line stations, and where physical distancing may be required as stated above the employer shall install cleanable solid partitions that effectively reduce transmission between the employee and other persons.
- The employer shall evaluate whether to halt some or all operations at the workplace until COVID-19 hazards have been corrected.
- Any other control measures deemed necessary by the Division through the Issuance of Order to Take Special Action, in accordance with title 8 section 332.3.

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](#)

