

Environmental and Workplace Health & Safety

California OSHA Issues Comprehensive and Demanding COVID-19 Emergency Regulation



By: [Gabrielle Sigel](#)

On the afternoon of November 30, 2020, the California Office of Administrative Law (OAL) issued the final approval, allowing the emergency COVID-19 regulation proposed by the California Division of Occupational Safety and Health (Cal-OSHA) and approved by the California Occupational Safety and Health Standards Board (Board) on November 19. The emergency regulation, establishing new sections 3205, 3205.1 through 3205.4 to Title 8, Division 1, Chapter 4 (General Industry Safety Orders) of the California Code of Regulations (CCR) is titled "COVID-19 Prevention." The COVID-19 Prevention Rule is attached [here](#) as approved by the OAL. The COVID-19 Prevention Rule is immediately effective on November 30, 2020. As an emergency regulation, it expires by October 21, 2021, unless it is extended or made permanent.

California, which as a "state-plan State," can adopt workplace safety and health regulations more stringent than US OSHA regulations and guidance, has through its emergency regulatory process adopted a COVID-19 regulation that applies to "all employees and places of employment" in California, except if the employees are working from home, the place of employment has only one employee "who does not have contact with other persons," or employees when covered by California's Aerosol Transmissible Diseases regulation, 8 CCR § 5199, which applies only to health care services, facilities, and operations. 8 CCR § 3205(a)(1).

The basic construction of the COVID-19 Prevention Rule follows the elements of California's Injury and Illness Prevention Program (IIPP) rule, 8 CCR § 3203, and requires that all employers prepare and adopt a written program with the same elements of employee communication, hazard identification, inspections, hazard correction, training, controls, reporting, recordkeeping and access, but adds substantive requirements relating to COVID-19 within each of those elements, and adds elements unique to an employer's response to and control of COVID-19. The COVID-19 Prevention Rule also has provisions affecting aspects of an employer's operations beyond its traditional safety and health scope, including an obligation to "continue and maintain an employee's earnings, 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" for employees who are otherwise able to work, but are excluded from the worksite for work-related COVID-19 exposures and quarantines. 8 CCR § 3205(10) (C).

Other notable aspects of the regulation include:

- Definitions of COVID-19 "exposure", "symptoms", "high-risk exposure period", "exposed workplace", periods of exclusion from the workplace (quarantine and isolation) and return-to-work criteria, that do not match the CDC's current approach for essential workforces and which do not allow for any future changes in CDC guidelines regarding the length of isolation, quarantine, or return-to-work criteria.
- Employers must provide viral testing for all employees excluded under Cal-OSHA's broad definition of "exposed workplace," up to twice weekly depending on the severity of an outbreak at the workplace.

- Employers, with employee participation, must “conduct a workplace-specific identification of all interactions, areas, processes, equipment and materials that could potentially expose employees to COVID-19 hazards.” 8 CCR § 3502 (c)(2)(D).
- Specific requirements regarding controls, including physical distancing, face coverings, ventilation, disinfection, cleaning, hygiene, PPE and engineering controls.
- Employers must provide notice within one business day of all COVID-19 cases in the exposed workplace to employees “who may have had COVID-19 exposures and [their union representative] and to all other employers/contractors in the workplace. 8 CCR § 3502 (c)(3)(B)3. (See also recently enacted revision to Labor Code § 6409.6 (AB 685).)
- Employers must communicate hazards, policies and procedures to employees and all “other employers, persons, and entities within or in contact with the employer’s workplace.” 8 CCR § 3502 (c)(1)(D)
- Specific requirements regarding COVID-19 case investigation that must be documented and provided to any employee, employee representative, Cal-OSHA, or local health agencies.
- Employers must have a documented procedure for investigation of COVID-19 cases in the workplace, with many specific steps required in the COVID-19 Prevention Rule.
- Requirements for employer-provided transportation to and from the workplace and employer-provided housing. 8 CCR §§ 3205.3 and 3205.4.

Merely preparing the written program document, in addition to the required procedures and protocols, will be a significant undertaking for almost all California employers. In the public hearing before the Board, Cal-OSHA representatives minimized the additional burden placed on employers given its view that employers already should have already undertaken much of the effort to update their basic IIPP document. Cal-OSHA representatives stated, however, that it recognized that employers would have to take some time to get all the requirements in place and would exercise enforcement discretion given the regulation’s immediate effective date. Cal-OSHA also informed the Board that it planned to issue interpretive guidance and other materials, but did not specify a date by which it would do so. Cal-OSHA stated that it would hold Advisory Committee meetings with employers and employees regarding refining the Rule, but noted that the agency did not expect to propose any changes in the regulatory language in the near-term.

For more information or advice on how to comply and implement the COVID-19 Prevention Rule, please contact the author. Additional information regarding working during the COVID-19 pandemic can be found on this blog and in Jenner & Block’s COVID-19 [Resource Center](#).

Conscious of the human, operational and financial strain that coronavirus is placing on businesses and organizations worldwide, Jenner & Block has assembled a multi-disciplinary Task Force to support clients as they navigate the legal and strategic challenges of the COVID-19 / Coronavirus situation.

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