

California's COVID-19 Workplace Safety Standard May Be Revised on Short Notice

Publications

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On May 20, 2021, the California Occupational Safety and Health Standards Board (“Board”) held a public meeting to consider revisions to the State’s COVID-19 emergency temporary standard (“ETS”), which had been the applicable law for California workplaces since November 30, 2020. (See December 1, 2020 Corporate Environmental Lawyer blog). On May 7, 2021, the California Division of Occupational Safety and Health (“Cal/OSHA”) issued a notice of emergency action regarding proposed revisions to the ETS for the Board to consider for adoption, given the developing science around COVID-19, particularly the impact of vaccines and Cal/OSHA’s experience enforcing the ETS. However, on May 19, 2021, Cal/OSHA asked the Board to table its vote on Cal/OSHA’s May 7 proposed COVID-19 ETS revisions.

Given Cal/OSHA’s May 7 proposed revisions to the ETS included notable revisions changing definitions, masking and physical distancing requirements, and engineering controls, including distinctions based on whether employees were vaccinated. However, on May 13, 2021, the Centers for Disease Control and Prevention (“CDC”) posted its guidance for fully vaccinated people recommending, in part, that “fully vaccinated people no longer need to a mask or physically distance in any setting, except where required by federal, local, tribal, or territorial laws, rules, and regulations, including local business and workplace guidance.” CDC, *Guidance for Fully Vaccinated People* (May 13, 2021). In light of that new guidance, and the science that the risk is low that vaccinated people transmit the virus, Governor Newsom announced that the state will implement the new CDC mask guidelines on June 15, 2021, along with fully reopening the economy. In addition, California Health and Human Services Secretary Dr. Mark Ghaly announced on May 17, 2021 that, starting on June 15, 2021, “California plans to implement the CDC’s guidelines around masking to allow fully vaccinated Californians to go without a mask in most indoor settings.” However, California Department of Public Health issued a directive on May 21, 2021, that adopted the CDC guidance, but also stated that, with respect to COVID-19 protections, employers remain subject to the ETS, as applicable to their business.

On May 19, 2021, the day before the Board meeting, Cal/OSHA sent a memo recommending that the Board not vote on its May 7 proposed revisions, because it “believes it is important to revisit the proposed COVID-19 prevention emergency regulations in light of this new [CDC] guidance.” In the memo, Cal/OSHA stated that it will “limit any potential changes to consideration of the recent [CDC]

guidance” regarding fully vaccinated people. On May 20, 2021, after hearing hours of public comment, the Board voted to table Cal/OSHA’s May 7 changes and to allow it to post, by May 28, 2021, its new proposed changes to the ETS for public comment. The Board will vote on June 3, 2021 in a special meeting as to whether to adopt the new Cal/OSHA proposed changes or to take other action on the ETS.

Jenner & Block’s *Corporate Environmental Lawyer* will continue to update on the California COVID-19 ETS and other COVID-19 matters as they unfold. Additional information regarding working during the COVID-19 pandemic can be found on this blog and in Jenner & Block’s COVID-19 Resource Center.

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