

# COVID-19 Pandemic—California’s OSHA Adopts Temporary, Emergency COVID-19 Regulations

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## The Regulations Require Employers to Establish and Maintain a Written COVID-19 Prevention Program to Reduce Workplace Exposure to COVID-19

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### SUMMARY

**Updated December 17, 2020.** On December 14, 2020, Governor Newsom issued [Executive Order No. N-84-20](#) (the “Executive Order”), which suspended the California Department of Industrial Relations’ Division of Occupational Safety and Health’s (“Cal/OSHA”) [temporary, emergency COVID-19 regulations](#) (the “Regulations”) regarding the exclusion of COVID-19 cases from the workplace to the extent the exclusion periods set forth in the Regulations exceed: (i) applicable quarantine or isolation periods recommended by the California Department of Public Health (“CDPH”), or (ii) applicable quarantine or isolation periods recommended or ordered by a local health officer who has jurisdiction over the workplace. The Executive Order specifically references the CDPH’s December 14, 2020 [Updated COVID-19 Quarantine Guidelines](#), which allow all asymptomatic close contacts (within 6 feet of an infected person for a cumulative total of 15 minutes or more over a 24-hour period) to discontinue quarantine after day 10 from the date of last exposure with or without testing. However, if an employer prevents a worker who returns to work before the 14-day period specified in the Regulations from meeting all of the conditions for the applicable quarantine or isolation period specified by the CDPH or a local health officer, then the employer must continue to provide the worker their benefits, including pay, for the remainder of the 14-day period.

The Executive Order also requires that if Cal/OSHA’s enforcement of the Regulations’ exclusion periods changes, Cal/OSHA shall promptly provide public notice of the change, including through posting notice on the regulations’ web page, which can be found [here](#). Because the Executive Order relies on CDPH and

local health officer guidance, employers should regularly review that guidance to ensure compliance with the Cal/OSHA regulations. These updates are incorporated into this memorandum.

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## **BACKGROUND**

On November 19, 2020, Cal/OSHA adopted Regulations for employers “to reduce employee exposure to the virus that causes COVID-19 and therefore reduce COVID-19 illness and transmission.”<sup>1</sup> The Regulations were approved by California’s Office of Administrative Law (“OAL”) and went into effect November 30, 2020. Unless extended, the Regulations will expire on October 2, 2021. On the same day, Cal/OSHA published frequently asked questions regarding the Regulations, which are available [here](#).

The Regulations apply to “all employees and places of employment,” except for (i) places of employment with only one employee who does not have contact with others, (ii) employees working from home, and (iii) employees covered by Section 5199 of Title 8 of the California Code of Regulations (e.g., healthcare facilities, services, or operations).

Under the Regulations employers are required to establish, implement, and maintain a written COVID-19 Prevention Program (“CPP”), which must include: (i) a system for communicating with employees concerning COVID-19; (ii) steps to identify, evaluate, and correct COVID-19 hazards; (iii) procedures for investigating and responding to COVID-19 cases in the workplace; (iv) COVID-19-related training; (v) physical distancing and face covering requirements; (vi) details concerning other controls put in place to help prevent the spread of COVID-19; (vii) a system for recording and reporting COVID-19 cases; and (viii) procedures for excluding COVID-19 cases from the workplace and returning employees to work. A copy of Cal/OSHA’s model COVID-19 Prevention Plan is available [here](#).

The Regulations also lay out requirements employers must follow in the event of multiple COVID-19 infections, a COVID-19 “outbreak,” or Major COVID-19 Outbreaks (each defined below) at a workplace. Finally, the Regulations outline COVID-19 prevention requirements for employer-provided housing and transportation.

The Regulations set forth the minimum workplace protections an employer must provide and do not prevent the state or local health department from imposing more protective or stringent mandates on places of employment. Thus, employers should consult state and local health department guidance before developing a CPP. The Regulation’s requirements are detailed below.

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## **WRITTEN COVID-19 PREVENTION PROGRAM**

Under the Regulations, employers must establish, implement, and maintain an effective, written COVID-19 Prevention Program (“CPP”), which may be incorporated into the employer’s existing Illness and Injury Prevention Program, which is required by Section 3203, or maintained in a separate document. The CPP must include each of the following elements:

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## A. SYSTEM FOR COMMUNICATING WITH EMPLOYEES.

The CPP must include a system of communication, under which employers must do all of the following in a form readily understandable to employees:

- Ask employees to report to the employer, without fear of reprisal, COVID-19 symptoms, possible COVID-19 exposures, and possible COVID-19 hazards at the workplace.
  - COVID-19 symptoms mean a fever of 100.4 degrees Fahrenheit or higher, chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea, unless a licensed healthcare professional determines the person's symptoms were caused by a known condition other than COVID-19.
  - 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 below) and applies regardless of the use of face coverings.
  - High-risk exposure period means the following time period:
    - For persons who develop COVID-19 symptoms: from two days before they first develop symptoms until 10 days after symptoms first appeared, and 24 hours have passed with no fever, without the use of fever-reducing medications, and symptoms have improved; or
    - For persons who test positive who never develop COVID-19 symptoms: from two days before until 10 days after the specimen for their first positive test for COVID-19 was collected.
  - COVID-19 hazard means exposure to potentially infectious material that may contain the virus that causes COVID-19.
- Describe procedures or policies for accommodating employees with medical or other conditions that put them at increased risk of severe COVID-19 illness.
- Provide information about access to COVID-19 testing. If testing is required under the Regulations, or section 3205.1 or 3205.2, the employer must inform affected employees of the reason for the COVID-19 testing and the possible consequences of a positive test.
- 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.

## B. IDENTIFICATION, EVALUATION, AND CORRECTION OF COVID-19 HAZARDS.

The CPP must include steps employers will take to identify, evaluate, and correct COVID-19 hazards and must:

- Allow for employee and authorized employee representative participation in the identification and evaluation of COVID-19 hazards.
- Include 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 at the workplace, the employer must ensure that face coverings are used during screening by both screeners and employees and, if temperatures are measured, that non-contact thermometers are used. Employers should also abide by applicable confidentiality requirements, which are discussed below.
- Include 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.

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- COVID-19 case is defined in the Regulations as a person who (i) has a positive COVID-19 test, (ii) is subject to a COVID-19-related order to isolate issued by a local or state health official, or (iii) has died due to COVID-19, in the determination of a local health department or per inclusion in the COVID-19 statistics of a county.
- COVID-19 test means a viral test for COVID-19 that is approved by, or has an Emergency Use Authorization from, the U.S. Food and Drug Administration and is administered in accordance with that FDA approval or emergency use authorization.

As part of the CPP, employers must also:

- Conduct a workplace-specific identification of all interactions, areas, activities, processes, equipment, and materials that could potentially expose employees to COVID-19 hazards. Employers must treat all persons, regardless of symptoms or negative COVID-19 test results, as potentially infectious.
  - This must 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 must also 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 are required to consider how employees and other persons enter, leave, and travel through the workplace, in addition to addressing fixed work locations.
- For indoor locations, evaluate how to maximize the quantity of outdoor air and whether it is possible to increase filtration efficiency to the highest level compatible with the existing ventilation system.
- Review applicable orders and guidance from the State of California and the local health department related to COVID-19 hazards and prevention, including information of general application and information [specific to the employer's industry](#), location, and operations. Further details on State guidance can also be found in our client memorandum "[COVID-19 Pandemic—California Publishes 'Employer Playbook for a Safe Reopening.'](#)"
- Evaluate existing COVID-19 prevention controls at the workplace and the need for different or additional controls.
- 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.
- Employers must implement effective policies and/or procedures for correcting unsafe or unhealthy conditions, work practices, policies, and procedures in a timely manner based on the severity of the hazard. This includes, but is not limited to, implementing controls and/or policies and procedures in response to the evaluations conducted according to the aforementioned requirements and to the investigation and response requirements described below, and implementing the physical distancing, face coverings, and other engineering and administrative controls described below.

### C. INVESTIGATION AND RESPONSE TO COVID-19 CASES.

The CPP must outline steps employers will take in investigating and responding to COVID-19 cases, including a description of the effective procedures that have been adopted to investigate COVID-19 cases in the workplace. This includes procedures for verifying COVID-19 case status, receiving information

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

When investigating COVID-19 cases at the place of employment, the employer must:

- 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 COVID-19 exposure. This requires an evaluation of the activities of the COVID-19 case and all locations at the workplace that may have been visited by the COVID-19 case during the high-risk exposure period.
- Give notice of the potential COVID-19 exposure, within one business day, in a way that does not reveal any personal identifying information of the COVID-19 case, to the following:
  - All employees who may have had COVID-19 exposure and their authorized representatives; and
  - Independent contractors and other employers present at the workplace during the high-risk exposure period.

The employer must also:

- Offer COVID-19 testing at no cost to employees during their working hours to all employees who had potential COVID-19 exposure in the workplace and provide them with the information on benefits described in the training requirements and exclusion requirements described below.
- Investigate whether any workplace conditions could have contributed to the risk of COVID-19 exposure and what could be done to reduce exposure to COVID-19 hazards.

### D. TRAINING AND INSTRUCTION OF EMPLOYEES.

Under the CPP, employers must provide effective training and instruction to employees that includes:

- The employer's COVID-19 policies and procedures to protect employees from 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 workers' compensation law, the federal Families First Coronavirus Response Act, Labor Code sections 248.1 and 248.5, Labor Code sections 3212.86 through 3212.88, local governmental requirements, the employer's own leave policies, and leave guaranteed by contract. More information on Federal and State benefits can also be found in our client memorandums "[U.S. Department of Labor Issues Workplace Guidelines for Coronavirus Outbreak, Including Specific Guidance on FMLA, FLSA and FECA](#)" and "[U.S. Department of Labor Issues Regulations Implementing the Families First Coronavirus Response Act's Leave Provisions.](#)"
- 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.
- Methods of physical distancing of at least six feet and the importance of combining physical distancing with the wearing of face coverings.
- The fact that particles containing the virus can travel more than six feet, especially indoors, so physical distancing must be combined with other controls, including face coverings and hand hygiene, to be effective.

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- 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 symptoms and the importance of not coming to work and obtaining a COVID-19 test if the employee has COVID-19 symptoms.

### **E. OTHER ENGINEERING CONTROLS, ADMINISTRATIVE CONTROLS, AND PERSONAL PROTECTIVE EQUIPMENT.**

In addition to the physical distancing and mask requirements discussed below, employers must also take the following measures:

- At fixed work locations where it is not possible to maintain the physical distancing requirement at all times, install cleanable solid partitions that effectively reduce aerosol transmission among the employee and other persons.
- For buildings with mechanical or natural ventilation, or both, maximize the quantity of outside air provided to the extent feasible, except when the U.S. Environmental Protection Agency Air Quality Index is greater than 100 for any pollutant or if opening windows or letting in outdoor air by other means would cause a hazard to employees (e.g., from excessive heat or cold).
- Implement cleaning and disinfecting procedures, which require:
  - Identifying and regularly cleaning and disinfecting frequently touched surfaces and objects, such as doorknobs, elevator buttons, equipment, tools, handrails, handles, controls, bathroom surfaces, and steering wheels. The employer must inform employees and authorized employee representatives of cleaning and disinfection protocols, including the planned frequency and scope of regular cleaning and disinfection.
  - Prohibiting the sharing of personal protective equipment and, to the extent feasible, items that employees come in regular physical contact with such as phones, headsets, desks, keyboards, writing materials, instruments, and tools. When it is not feasible to prevent sharing, sharing must be minimized and such items and equipment must be disinfected between uses by different people. Sharing of vehicles must be minimized to the extent feasible, and high touch points (steering wheel, door handles, seatbelt buckles, armrests, shifter, etc.) must be disinfected between users.
  - Cleaning and disinfection of areas, material, and equipment used by a COVID-19 case during the high-risk exposure period.
  - Cleaning and disinfecting must be done in a manner that does not create a hazard to employees and, thus, employers should refer to [Group 2](#) and [Group 16](#) of the General Industry Safety Orders for further information.
- Evaluate its hand washing facilities, determine the need for additional facilities, encourage and allow time for employee hand washing, and provide employees with an effective hand sanitizer. Employers must also encourage employees to wash their hands for at least 20 seconds each time. Provision or use of hand sanitizers with methyl alcohol is prohibited.
- With regards to personal protective equipment, employers must:
  - Evaluate the need for personal protective equipment to prevent exposure to COVID-19 hazards, such as gloves, goggles, and face shields, and provide such personal protective equipment as needed.
  - Evaluate the need for respiratory protection in accordance with section 5144 when the physical distancing requirements described below are not feasible or are not maintained.

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- Provide and ensure use of respirators in accordance with section 5144 when deemed necessary by Cal/OSHA through the Issuance of Order to Take Special Action, in accordance with title 8, section 332.3.
- Provide and ensure use of eye protection and respiratory protection in accordance with section 5144 when employees are exposed to procedures that may aerosolize potentially infectious material such as saliva or respiratory tract fluids.

### F. REPORTING, RECORDKEEPING, AND ACCESS.

Employers must take the following steps with regards to recording and reporting COVID-19 cases:

- Report information about COVID-19 cases at the workplace to the local health department whenever required by law, and provide any related information requested by the local health department.
- Report immediately to Cal/OSHA any COVID-19-related serious illnesses or death, as defined under section 330(h), of an employee occurring in a place of employment or in connection with any employment.
- Maintain records of the steps taken to implement the written COVID-19 Prevention Program in accordance with [8 CCR section 3203\(b\)](#).
- Make the written COVID-19 Prevention Program available at the workplace to employees, authorized employee representatives, and to representatives of Cal/OSHA immediately upon request.
- Keep a record of and track all COVID-19 cases 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 must be kept confidential in accordance with the confidentiality requirements described above. The information must be made available to employees, authorized employee representatives, or as otherwise required by law, with personal identifying information removed.

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## EXCLUSION OF EMPLOYEES, CONTINUED BENEFITS, AND RETURNING TO WORK

**Exclusion of Employees.** The Regulations provide that where COVID-19 cases are identified, employers must exclude employees that could have been exposed to COVID-19 from the workplace for 14 days after the last known exposure to a COVID-19 case and until the other return to work requirements, discussed below, are met. Pursuant to the Executive Order, however, this 14-day exclusion period may be suspended to the extent it exceeds guidance from the CDPH, or any applicable quarantine or isolation period recommended or ordered by a local health officer who has jurisdiction over the workplace. Thus, employers should regularly consult CDPH and local health officer guidance, including CDPH's December 14, 2020 [Updated COVID-19 Quarantine Guidelines](#), to determine the applicable exclusion period.

**Continuation of Pay and Benefits.** Employers must continue and maintain the earnings, seniority, and all other employee rights and benefits, including the employee's right to their former job status, for any employee who has been excluded from work due to COVID-19 exposure but is otherwise able and available to work. Employers may use employer-provided employee sick leave benefits for this purpose and consider benefit payments from public sources in determining how to maintain earnings, rights and benefits, where permitted by law and when not covered by workers' compensation. At the time the employee has been

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excluded from the workplace, the employer must provide the employee with information about the continuation of pay and benefits. This section, however, does not limit any other applicable law, employer policy, or collective bargaining agreement that provides employees with greater protection.

These requirements do not apply (i) to any period of time during which an employee is unable to work for reasons other than protecting persons at the workplace from possible COVID-19 transmission, or (ii) where the employer demonstrates that the COVID-19 exposure is not work related. Employers need not exclude employees who have not been excluded or isolated by the local health department if they are temporarily reassigned to work where they do not have contact with other persons until the return to work requirements below are met.

**Returning to Work.** Any employee that has been removed from the workplace for COVID-19-related reasons must satisfy the following criteria before they can return to the workplace:

- **COVID-19 Cases with COVID-19 Symptoms.** Employees who experience COVID-19 symptoms may not return to work until (i) at least 24 hours have passed since a fever of 100.4 Fahrenheit or higher has resolved without the use of fever-reducing medications, (ii) COVID-19 symptoms have improved, and (iii) at least 10 days have passed since COVID-19 symptoms first appeared.
- **COVID-19 Cases Who Tested Positive but are Asymptomatic.** Employees who have tested positive for COVID-19 but who have not developed symptoms may 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.

Pursuant to the Executive Order, the period during which an employee shall not return to work may be suspended to the extent it exceeds guidance from the CDPH, or any applicable quarantine or isolation period recommended or ordered by a local health officer who has jurisdiction over the workplace. Thus, employers should regularly consult CDPH and local health officer guidance, including CDPH's December 14, 2020 [Updated COVID-19 Quarantine Guidelines](#), to determine when an employee may return to work.

Employers may not require a negative COVID-19 test as a condition to an employee returning to the workplace.

In situations where the local or state health official issues an order for an employee to isolate or quarantine, the employee must not return to work until the isolation or quarantine period is completed, the order is lifted, or, if no period is stated, 10 days from the time the order to isolate was effective or 14 days from the time the order to quarantine was effective.

If there are no violations of local or state health officer orders for isolation or quarantine, Cal/OSHA may, upon request, allow employees to return to work on the basis that the removal of an employee would create undue risk to a community's health and safety. In such cases, the employer must develop, implement, and maintain effective control measures to prevent transmission in the workplace including providing isolation for the employee at the workplace and, if isolation is not possible, the use of respiratory protection in the workplace.

## MULTIPLE COVID-19 INFECTIONS AND COVID-19 OUTBREAKS

The Regulations impose additional requirements on employers where a place of employment is identified by a local health department as the location of a COVID-19 outbreak or where three or more COVID-19 cases occur in an exposed workplace within a 14-day period. The below requirements related to multiple infections and outbreaks apply until no new cases are detected at the workplace for a 14-day period.

**Testing.** Employers must provide COVID-19 testing to all employees at the exposed workplace, except for employees who were not present at the workplace during the period of the outbreak identified by a local health department or the relevant 14-day period(s), as applicable. The testing must be provided at no cost to employees during employees' working hours.

COVID-19 testing must consist of the following:

- Immediately upon being covered by this section, all employees in the exposed workplace must be tested and then tested again one week later. Negative COVID-19 test results of employees with COVID-19 exposure does not impact the duration of any quarantine period required by, or orders issued by, the local health department.
- After the first two COVID-19 tests, employers must provide continuous COVID-19 testing of employees who remain at the workplace at least once per week, or more frequently if recommended by the local health department, until no new cases are detected at the workplace for a 14-day period.
- Employers must provide additional testing when deemed necessary by Cal/OSHA through the Issuance of Order to Take Special Action, in accordance with title 8, section 332.3.

**Exclusion from Workplace.** Any COVID-19 cases or exposed employees must be removed from the workplace according to the same removal and return-to-work policies discussed above.

**Investigation.** Where there are multiple COVID-19 cases or an outbreak, the Regulations require employers to investigate and identify possible workplace-related factors that could have contributed to the outbreak in accordance with the investigation procedures discussed above.

**Review of Existing Policies, Procedures, and Controls.** The employer must immediately perform a review of potentially relevant COVID-19 policies, procedures, and controls and implement changes as needed to prevent further spread of COVID-19. The review of existing policies, procedures, and controls must include:

- Investigation of new or unabated COVID-19 hazards including the employer's leave policies and practices and whether employees are discouraged from remaining home when sick; the employer's COVID-19 testing policies; insufficient outdoor air; insufficient air filtration; and lack of physical distancing.

The review must be updated every 30 days that the outbreak continues, in response to new information or to new or previously unrecognized COVID-19 hazards, or when otherwise necessary, and the employer must implement changes to reduce the transmission of COVID-19 based on the investigation and review described above. The employer must consider moving indoor tasks outdoors or having them performed

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remotely, increasing outdoor air supply when work is done indoors, improving air filtration, increasing physical distancing as much as possible, respiratory protection, and other applicable controls.

**Notification.** Once the employer knows, or with diligent inquiry would have known, of three or more COVID-19 cases at the workplace, the employer must contact the local health department immediately, but no longer than 48 hours after, upon learning of the cases to report the outbreak. The employer is required to report the following information:

- Total number of COVID-19 cases;
- For each COVID-19 case, the name, contact information, occupation, workplace location, business address, and hospitalization and/or fatality status of each COVID-19 case;
- The North American Industry Classification System code of the workplace of each COVID-19 case; and
- Any other information requested by the local health department.

In addition, beginning January 1, 2021, the employer must also provide all information required by [Labor Code section 6409.6](#) to the local health department.

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### MAJOR COVID-19 OUTBREAKS

The Regulations impose additional, more stringent requirements on employers where a place of employment experiences a “major outbreak.” A workplace is the location of a major outbreak when there are 20 or more COVID-19 cases in an exposed workplace within a 30-day period. The requirements set forth below apply until there are no new cases detected in a workplace for a 14-day period.

**Testing.** Employers must provide COVID-19 testing twice a week, or more frequently if recommended by the local health department, to all employees present at the exposed workplace during the relevant 30-day period(s) and all who remain at the workplace. The COVID-19 testing must be provided at no cost to the employees and during employees’ working hours.

**Exclusion from Workplace.** Employers must ensure COVID-19 cases and employees with COVID-19 exposure are excluded from the workplace in accordance with the Regulations and any relevant local health department orders.

**Investigation and Notification.** The investigation and notification requirements are the same as those for outbreak locations.

**Hazard Corrections.** In addition to the general workplace investigation and correction of COVID-19 hazards requirements found in the employer’s CPP, employers who have a major outbreak at their workplace must take the following actions:

- In buildings or structures with mechanical ventilation, 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 must use filters

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with the highest compatible filtering efficiency. Employers must 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 must implement their use to the degree feasible.

- Determine the need for a respiratory protection program or changes to an existing respiratory protection program under section 5144 to address COVID-19 hazards.
- 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 Cal/OSHA through the Issuance of Order to Take Special Action, in accordance with title 8, section 332.3.

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## CONFIDENTIALITY OF EMPLOYEE INFORMATION

In drafting and implementing the CPP program, employers must be aware of the following requirements concerning the confidentiality of employee information:

- Personal identifying information of COVID-19 cases or persons with COVID-19 symptoms must be kept confidential. All COVID-19 testing or related medical services provided by the employer under the Regulations and sections 3205.1 through 3205.4 must be provided in a manner that ensures the confidentiality of employees. Exceptions to this confidentiality requirement include:
  - Unredacted information on COVID-19 cases must be provided to the local health department, the CDPH, Cal/OSHA, the National Institute for Occupational Safety and Health (“NIOSH”), or as otherwise required by law immediately upon request.
- The employer must ensure that all employee medical records required by the Regulations and sections 3205.1 through 3205.4 are kept confidential and are not disclosed or reported without the employee’s express written consent to any person within or outside the workplace. Exceptions to this confidentiality requirement include:
  - Unredacted medical records must be provided to the local health department, CDPH, Cal/OSHA, NIOSH, or as otherwise required by law immediately upon request.
  - Records that do not contain individually identifiable medical information or from which individually identifiable medical information has been removed.
- Employers should also consult the Equal Employment Opportunity Commission’s guidance on the confidentiality of employee information, which can be found in our client memorandum, [“EEOC Releases Updated Guidance to Employers Regarding ADA-Compliant Practices During the COVID-19 Crisis.”](#)

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## PHYSICAL DISTANCING AND FACE COVERINGS

### A. PHYSICAL DISTANCING.

- All employees must be separated from other persons by at least six feet, except where an employer can demonstrate that six feet of separation is not possible, and except for momentary exposure while persons are in movement. Methods of physical distancing include: telework or other remote work arrangements; reducing the number of persons in an area at one time, including visitors; visual cues such as signs and floor markings to indicate where employees and others should be located or their direction and path of travel; staggered arrival, departure, work, and break times; and adjusted work processes or procedures, such as reducing production speed, to allow greater distance between employees.

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- When it is not possible to maintain a distance of at least six feet, individuals must be as far apart as possible.

### B. FACE COVERINGS.

- Employers must provide face coverings and ensure they are worn by employees over the nose and mouth when indoors, when outdoors and less than six feet away from another person, and where required by orders from the CDPH or local health department. Employers must ensure that face coverings are clean and undamaged. Although face shields may be worn together for additional protection, they are considered a replacement for face coverings. The following are exceptions to the face coverings requirement:
  - When an employee is alone in a room.
  - 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 possible.
  - Employees wearing respiratory protection in accordance with section 5144 or other title 8 safety orders.
  - 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 that cannot feasibly be performed with a face covering. This exception is limited to the time period in which such tasks are actually being performed, and the unmasked employee must be at least six feet away from all other persons unless unmasked employees are tested at least twice weekly for COVID-19. The CDPH has issued guidance for employers that identifies examples when wearing a face covering is likely not feasible, which is available [here](#).
- Employees exempted from wearing face coverings due to a medical condition, mental health condition, or disability must wear an effective non-restrictive alternative, such as a face shield with a drape on the bottom, if their condition or disability permits it.
- Any employee not wearing a face covering, face shield with a drape or other effective alternative, or respiratory protection, for any reason, must be at least six feet apart from all other persons unless the unmasked employee is tested at least twice weekly for COVID-19. Employers may not use COVID-19 testing as an alternative to face coverings when face coverings are otherwise required by this section.
- Employers may not prevent employees 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.
- Employers must implement measures to communicate to non-employees the face coverings requirements on their premises.
- The employer must develop COVID-19 policies and procedures to minimize employee exposure to COVID-19 hazards originating from any person not wearing a face covering, including a member of the public.

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## EMPLOYER-PROVIDED HOUSING AND TRANSPORTATION

The Regulations impose specific requirements on employers who provide housing and transportation.

**Employer-Provided Housing.** Employer-provided housing is any place or area of land, any portion of any housing accommodation, or property upon which a housing accommodation is located, consisting of: living quarters, dwelling, boardinghouse, tent, bunkhouse, maintenance-of-way car, mobile home, manufactured home, recreational vehicle, travel trailer, or other housing accommodations. Employer-provided housing includes a “labor camp,” as that term is used in title 8 of the California Code of Regulations or other

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regulations or codes. The employer-provided housing may be maintained in one or more buildings or one or more sites, including hotels and motels, and the premises upon which they are situated, or the area set aside and provided for parking of mobile homes or camping. Employer-provided housing is housing that is arranged for or provided by an employer, other person, or entity to workers, and in some cases to workers and persons in their households, in connection with the workers' employment, whether or not rent or fees are paid or collected.

The requirements related to employer-provided housing do not apply where the housing is provided for the purpose of emergency response, including firefighting, rescue, and evacuation, and support activities directly aiding response such as utilities, communications, and medical operations, if: (i) the employer is a government entity; or (ii) the housing is provided temporarily by a private employer and is necessary to conduct the emergency response operations.

**Assignment of Housing Units.** Employers must ensure that shared housing unit assignments are prioritized in the following order:

- Residents who usually maintain a household together outside of work, such as family members, must be housed in the same housing unit without other persons.
- Residents who work in the same crew or who work together at the same worksite must be housed in the same housing unit without other persons.
- Employees who do not usually maintain a common household, work crew, or worksite must be housed in the same housing unit only when no other housing alternatives are possible.

**Physical Distancing and Controls.** Employers must:

- Ensure the premises are of sufficient size and layout to permit at least six feet of physical distancing between residents in housing units, common areas, and other areas of the premises.
- Ensure beds are spaced at least six feet apart in all directions and positioned to maximize the distance between sleepers' heads. For beds positioned next to each other (*i.e.*, side by side) the beds must be arranged so that the head of one bed is next to the foot of the next bed. For beds positioned across from each other (*i.e.*, end to end) the beds must be arranged so that the foot of one bed is closest to the foot of the next bed. Bunk beds may not be used.
- In housing units, maximize the quantity and supply of outdoor air and increase filtration efficiency to the highest level compatible with the existing ventilation system.

**Face Coverings.** Employers must provide face coverings to all residents and provide information to residents on when they should be used in accordance with state or local health officer orders or guidance.

**Cleaning and Disinfecting.** Employers must:

- Ensure that housing units, kitchens, bathrooms, and common areas are effectively cleaned and disinfected at least once a day to prevent the spread of COVID-19. Cleaning and disinfecting must be done in a manner that protects the privacy of residents.
- Ensure that unwashed dishes, drinking glasses, cups, eating utensils, and similar items are not shared.

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**Screening.** The employer must encourage residents to report COVID-19 symptoms to the employer.

**COVID-19 Testing.** The employer must establish, implement, and maintain effective policies and procedures for COVID-19 testing of occupants who had a COVID-19 exposure, who have COVID-19 symptoms, or as recommended by the local health department.

**Isolation of COVID-19 Cases and Persons with COVID-19 Exposure.** Employers must:

- Effectively isolate COVID-19 exposed residents from all other occupants, including, at a minimum, by providing COVID-19 exposed residents with a private bathroom, sleeping area, and cooking and eating facility.
- Effectively isolate COVID-19 cases from all occupants who are not COVID-19 cases, including, at a minimum, by housing COVID-19 cases only with other COVID-19 cases, and providing COVID-19 case occupants with a sleeping area, bathroom, and cooking and eating facility that is not shared by non-COVID-19 case occupants.
- Keep confidential personal identifying information regarding COVID-19 cases and persons with COVID-19 symptoms in accordance with the confidentiality requirements described above.
- End isolation in accordance with the exclusion and return to work requirements described above and any applicable local or state health officer orders.

**Employer-Provided Transportation To and From Work.** Employer-provided motor vehicle transportation to and from work is any transportation of an employee, during the course and scope of employment, provided, arranged for, or secured by an employer including ride-share vans or shuttle vehicles, car-pools, and private charter buses, regardless of the travel distance or duration involved.

The requirements for employer-provided transportation do not apply where: (i) the driver and all passengers are from the same household outside of work, such as family members; or (ii) employer-provided transportation is necessary for emergency response, including firefighting, rescue, and evacuation, and support activities directly aiding response such as utilities, communications, and medical operations.

**Assignment of Transportation.** Employers must prioritize shared transportation assignments in the following order:

- Employees residing in the same housing unit must be transported in the same vehicle.
- Employees working in the same crew or worksite must be transported in the same vehicle.
- Employees who do not share the same household, work crew, or worksite must be transported in the same vehicle only when no other transportation alternatives are possible.

**Physical Distancing and Face Coverings.** Employers must ensure that:

- The same physical distancing and face covering requirements as described above are followed for employees waiting for transportation.
- The vehicle operator and any passengers are separated by at least three feet in all directions during the operation of the vehicle, regardless of the vehicle's normal capacity.

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- The vehicle operator and any passengers are provided and wear a face covering in the vehicle per the same face covering requirements described above.

**Screening.** Employers must develop, implement, and maintain effective procedures for screening and excluding drivers and riders with COVID-19 symptoms prior to boarding shared transportation.

**Cleaning and Disinfecting.** Employers must ensure that:

- All high-contact surfaces (door handles, seatbelt buckles, armrests, etc.) used by passengers are cleaned and disinfected before each trip.
- All high-contact surfaces used by drivers, such as the steering wheel, armrests, seatbelt buckles, door handles, and shifter, must be cleaned and disinfected between different drivers.
- Employers must provide sanitizing materials and ensure they are kept in adequate supply.

**Ventilation.** Employers must ensure that vehicle windows are kept open, and the ventilation system set to maximize outdoor air and not set to recirculate air. Windows do not have to be kept open if one or more of the following conditions exist:

- The vehicle has functioning air conditioning in use and the outside temperature is greater than 90 degrees Fahrenheit.
- The vehicle has functioning heating in use and the outside temperature is less than 60 degrees Fahrenheit.
- Protection is needed from weather conditions, such as rain or snow.
- The vehicle has a cabin air filter in use and the U.S. EPA Air Quality Index for any pollutant is greater than 100.

**Hand Hygiene.** Employers must provide hand sanitizer in each vehicle and ensure that all drivers and riders sanitize their hands before entering and exiting the vehicle. Hand sanitizers with methyl alcohol are prohibited.

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## ADDITIONAL INFORMATION

To stay informed of litigation and regulatory developments that affect the workplace, [click here](#) to subscribe to our *Legal Developments Affecting the Workplace* [blog](#).

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## ENDNOTES

<sup>1</sup> Finding of Emergency Government Code Section 11346.1 Occupational Safety and Health Standards Board Proposed Emergency Regulation, California Department of Industrial Relation Division of Occupational Safety and Health Standards Board (Nov. 19, 2020), available at <https://www.dir.ca.gov/OSHSB/documents/COVID-19-Prevention-Emergency-FOE.pdf>.

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