

# Cal/OSHA Adopts Revised COVID-19 Prevention Emergency Temporary Standards

## WRITTEN BY

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### Who Needs to Know

California employers.

### Why It Matters

On June 17, the Occupational Safety and Health Standards Board (Board) approved the further revised Standards (Revised Standards). Typically, the Office of Administrative Law (OAL) has up to 10 days to approve the Revised Standards following Board approval, but Governor Newsom issued a June 17 executive order, which made the Revised Standards effective immediately.

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In November 2020, the Occupational Safety and Health Standards Board (Board) adopted the Cal/OSHA COVID-19 Prevention Emergency Temporary Standards (Standards), which went into effect on November 30, 2020 and were expected to remain in place through at least October 2021. Since their implementation, California employers have struggled to comply with the burdensome requirements under the Standards, ranging from no-cost testing to continuing employee pay when quarantined for work-related COVID-19 exposure.

### Standards Are Revised; Then Revised Again, Effective Immediately

Fast forward to June 2021. Circumstances improved beyond expectations after the Standards went into effect, including widespread accessibility to vaccinations, declining infection rates, relaxed guidance from the Centers for Disease Control and Prevention (CDC) on face coverings and social distancing requirements for fully vaccinated individuals, and California's publicized "reopening" on June 15. All signs pointed to a long-awaited return to pre-pandemic normalcy, with the exception of the seemingly outdated Standards from November 2020 that continued in force.

On June 3, the Board voted to adopt the initial revised Standards. However, due to heavy backlash and criticism based on notable inconsistencies with the CDC and the state's relaxed guidance on face coverings, the Board called an emergency, "special" meeting on June 9 and voted to redraft the revised Standards. On June 17, the Board approved the [further revised Standards](#) (Revised Standards). Typically, the Office of Administrative Law (OAL) has up to 10 days to approve the Revised Standards following Board approval, but Governor Newsom issued a June 17 [executive order](#), which made the Revised Standards effective immediately.

### Summary of Key Changes

The Department of Industrial Relations' (DIR) June 17 [news release](#) highlights key takeaways of the Revised Standards, including:

- Outdoor face coverings are not required (except during outbreaks), regardless of vaccination status.
- Employers may allow fully vaccinated employees not to wear face coverings indoors, but they must document their vaccination status. Some circumstances require face coverings regardless of vaccination status. For example, during an outbreak, all employees must wear face coverings indoors and outdoors when six-foot physical distancing cannot be maintained.
- Fully vaccinated employees without symptoms do not need to be tested or quarantined after close contacts with COVID-19 cases unless they have symptoms.
- Employers must provide unvaccinated employees with respirators for voluntary use when working indoors or in a vehicle with others, upon request.
- Employers may not retaliate against employees for wearing face coverings.
- Physical distancing or barrier requirements are not required, regardless of employee vaccination status, except during periods of outbreak and major outbreak.
- Employers must evaluate ventilation systems to maximize outdoor air and increase filtration efficiency and evaluate the use of additional air cleaning systems.

## Further Explanation of Revised Standards

- **Application**
  - The Revised Standards do not apply to employees working from home or teleworking from a location of the employee's choice, nor do they apply to work locations with one employee who does not have contact with others.
- **Vaccination Status**
  - In order to treat an employee as "fully vaccinated," employers must have "documentation showing that the person received, at least 14 days prior, either the second dose in a two-dose COVID-19 vaccine series or a single-dose COVID-19 vaccine." Therefore, employers must document vaccination status for employees who do not wear face coverings or otherwise qualify for any other exemptions on the basis of vaccination status (*e.g.*, exclusion and testing requirements).
  - The method of documentation is not addressed in the Revised Standards, but is addressed in the FAQs as described in the last section below.
- **Face Coverings**
  - "Face covering" is defined as "a surgical mask, a medical procedure mask, a respirator worn voluntarily, or a tightly woven fabric or non-woven material of at least layers," and excludes a "scarf, ski mask, balaclava, bandana, turtleneck collar, or single layer of fabric." Based on this new definition, employers may need to verify whether employee face coverings qualify as an acceptable "face covering."
  - Fully vaccinated employees (1) do not need to be offered testing or excluded from work after close contact unless they have COVID-19 symptoms, and (2) do not need to wear face coverings except for certain situations during outbreaks and in settings where the California Department of Public Health (CDPH) requires all persons to wear them.
  - Unvaccinated employees must continue to wear face coverings except when alone in a room or vehicle, eating and drinking, accommodation is required, or job duties make a face covering infeasible or create a hazard.
  - Regardless of vaccination status, employees who conduct employee screenings (*e.g.*, taking employee temperatures) indoors must wear face coverings.
  - Employees who (1) cannot wear a face covering due to disability or for other safety reasons, and (2) cannot wear a nonrestrictive alternative (*e.g.*, face shield with drape) must stay at least six feet apart from others unless (a) they are fully vaccinated, or (b) are tested at least weekly during paid time and at no cost to employees.
  - Employers must still provide face coverings upon request, regardless of vaccination status.

- **Respirators**
  - “Respirators” are defined as “a respiratory protection device approved by the National Institute of Occupational Safety and Health (NIOSH) to protect the wearer from particulate matter, such as an N95 filtering facepiece respirator.”
  - Employers must provide respirators to:
    - Employees who are not fully vaccinated and who work indoors or in a vehicle with others, upon request; and
    - Employees in the exposed group (regardless of vaccination status) for voluntary use during a major outbreak.
  - When providing respirators, employers must (1) provide instructions on how to properly wear the respirators and how to perform a proper seal check; (2) encourage such use of respirators when provided for voluntary use; and (3) ensure that employees are provided with a respirator of the correct size.
- **Physical Distancing**
  - Physical distancing requirements are eliminated, except where an employer determines there is a hazard and for certain employees during major outbreaks.
- **COVID-19 Prevention Program and Training**
  - Employers must provide training and instruction that address additional topics, such as access to COVID-19 vaccination and testing, respirator use, and the fact that vaccination is effective at preventing COVID-19 and protecting against transmission and serious illness or death.
- **Engineering and Ventilation Controls**
  - Employers must review the [interim guidance for ventilation, filtration, and air quality in indoor environments](#).
  - Employers must evaluate ventilation systems to maximize outdoor air and increase filtration efficiency, as well as evaluate the use of additional air cleaning systems.
- **Exclusion from the Workplace**
  - For purposes of determining who was exposed to COVID-19 in the workplace, the Revised Standards replace the concept of “exposed workplace,” and instead more narrowly focus on the “exposed group.” The “exposed group” consists of employees at a work location, working area, or a common area where an employee COVID-19 case was present during a high-risk exposure period. The “exposed group” excludes instances where (1) the infected employee visited the area for less than 15 minutes during the high-risk exposure period, and (2) if the infected employee was wearing a face covering during the entire visit.
  - Following “close contact,” employees do not need to be excluded from the workplace if (1) they are fully vaccinated and without COVID-19 symptoms, or (2) they recently recovered from COVID-19 and remained symptom-free for 90 days after the initial onset of symptoms or the first positive test. The Revised Standards also clarify that employees are not considered to be in “close contact” so long as they wore a respirator while within six feet of the COVID-19 case.
  - Continuation of pay requirements during periods of exclusion do not apply where the excluded employee received any disability payments under workers’ compensation or otherwise. This exception is in addition to the initial exception under the original Standards, which states that continuation of pay requirements do not apply if an employer can demonstrate that the exposure was not work related.
- **Return-to-Work Criteria**
  - Employees in close contact who develop symptoms may only return to work when meeting all of the following conditions: (1) The employee tests negative for COVID-19 using a polymerase chain reaction (PCR) test taken after the onset of symptoms; (2) at least 10 days have passed since the last known close contact; and (3) the employee has been symptom free for at least 24 hours without using fever-reducing medications.
- **Outbreaks**
  - The Revised Standards limit the definition of “outbreak” to mean only *employee* COVID-19 cases within an exposed group. The original Standards more broadly defined “outbreak” based on the number of “COVID-19 cases,” which included nonemployees like visitors, independent contractors, or vendors. During an outbreak:
    - Employees in the exposed group must generally wear face coverings when indoors, or when outdoors and less than six feet from another person.
    - Employers must give notice to exposed employees who are not fully vaccinated of their right to request voluntary use of a respirator.

- Employers must evaluate whether to implement physical distancing and barriers during an outbreak.
- Employers must provide testing to employees who are not fully vaccinated.
- During a major outbreak:
  - Employers must provide respirators for voluntary use to all employees in the exposed group, regardless of vaccination status.
  - Employees who do not wear respirators must be separated from others by at least six feet, except for momentary exposure.
  - Employers must install partitions at workstations where an exposed employee is assigned to work for extended periods of time, such as cash registers, desks, and production line stations, if physical distancing cannot be maintained at all times.
  - Employers must provide testing to all employees, regardless of vaccination status.
- Employers must still provide no-cost testing during paid time to all employees in the exposed group during an outbreak or major outbreak except for (1) fully vaccinated employee prior to the outbreak with no symptoms; and (2) employees who previously had COVID-19 for 90 days after the initial onset of symptoms or after the first positive test.
- **Special Protections for Housing and Transportation**
  - Employer-provided housing and transportation are exempt from the regulations where all employees are fully vaccinated.
- **Testing**
  - The Revised Standards increase testing obligations. Employers must now provide no-cost testing during paid time to *all employees who are not fully vaccinated and exhibit COVID-19 symptoms* — regardless of whether the exposure was work related.
  - In addition, employers must continue to provide no-cost testing during paid time to unvaccinated employees following exposure or close contact to vaccinated employees after exposure who develop symptoms, to unvaccinated employees during an outbreak, and to all employees (regardless of vaccination status) during a major outbreak.

## Updated FAQs and Enforcement

The DIR has already published [FAQs](#) and a [fact sheet](#) specifically addressing the Revised Standards in an attempt to address residual issues. The DIR also has updated its [prior FAQs](#) since adopting the Revised Standards. For example, the Revised Standards indicate that employers must have “documentation” to consider an employee as “fully vaccinated,” yet they are silent on the type of required documentation. The FAQs clarify that employers may document vaccination status by maintaining copies of proof of vaccination, maintaining a record of employees who present proof (but not the record itself), or obtaining employee self-attestations to vaccination status. However, the type of information collected may create other compliance obligations, such as privacy notices prior to collection, recordkeeping and retention requirements, and employee confidentiality.

In light of the abrupt implementation under the executive order, the FAQs encourage employers to implement the Revised Standards as soon as possible, but clarify that Cal/OSHA will not issue any citations “[i]f an employer is continuing to comply with the November Standards while implementing the revisions.”

As such, California employers are encouraged to monitor the FAQs for further updates and be on the lookout for the updated model COVID-19 Prevention Program. California employers also should consult with [counsel](#) while considering and implementing updates to their COVID-19 practices to comply with the Revised Standards and to assess potential overlap with applicable local ordinances or other legal compliance obligations, such as employee privacy or recordkeeping requirements.

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