

Cal/OSHA's New Emergency Standards for COVID-19



How did the new COVID-19 regulations come about?

On November 19, 2020, California's Department of Industrial Relations' Occupational Safety and Health Standards Board (the "Board") adopted "Emergency Temporary Standards," aimed at preventing the spread of COVID-19 in the workplace. These new regulations were drafted by the California Division of Occupational Safety and Health ("Cal/OSHA"). After approval by the Office of Administrative Law, the regulations went into effect on November 30, 2020 and will remain in effect for 180 days (roughly 6 months), with potential extensions of up to 90-days if re-approved.

Who needs to comply with these new regulations?

The Emergency Temporary Standards apply to "all employees and places of employment" except for:

- Workplaces with one employee who does not have contact with other people;
- Employees working from home; and
- Employees already covered by Cal/OSHA's aerosol transmission standard (such as health care facilities, laboratories, etc.).

What do these new regulations require?

The Emergency Temporary Standards require employers to implement a **Written COVID-19 Prevention Program** (“WCPP”). This WCPP may be integrated into the employer’s “Injury and Illness Program” or maintained in a separate document. The elements of a WCPP must include:

- System for communicating to employees;
- Identification and evaluation of COVID-19 hazards;
- Investigating and responding to COVID-19 cases in the workplace;
- Correction of COVID-19 hazards;
- Employee training and instruction;
- Physical distancing;
- Face coverings;
- Other engineering controls, administrative controls, and personal protective equipment;
- Reporting, record-keeping, and access to records;
- Exclusion of COVID-19 cases from the workplace; and
- Return to work criteria.

More detail on specific requirements of the Written COVID-19 Prevention Program

1) Identify, evaluate, and correct COVID-19 hazards

Employers are required to identify all interactions, areas, activities, processes, equipment, and materials that could potentially expose employees to COVID-19. When evaluating potential hazards, employers should identify different places and times that put employees at risk, including when people may congregate or come in contact with one another or have exposure to other people who enter the workplace. Employees must be allowed to participate in the process.



2) Screening and testing

Employers must implement a process for screening employees for COVID-19 and responding to employees with symptoms. Employers may ask employees to evaluate their own symptoms before reporting to work or to conduct screening at the workplace.

Testing for COVID-19 is not required unless an employer has an “outbreak” (defined as three or more COVID-19 cases in an exposed workplace within a 14-day period) or a “major outbreak” (defined as 20 or more COVID-19 cases in an exposed workplace within a 30-day period). If there is an outbreak, employers must provide testing and inform affected employees of the reason for the testing and the possible consequences of a positive test.

3) Physical distancing

The Emergency Temporary Standards require that employers separate employees from other people by at least six feet, except where an employer can demonstrate that six feet of separation is not possible or during momentary movement. Employers should outline their specific methods of physical distancing, such as telework, staggered work times, and visual cues such as signs.

4) Face coverings

Employers are required to provide face coverings and to ensure they are worn by employees (1) when indoors, (2) when outdoors less than six feet away from other people, and (3) when required by orders from California or local health departments.

5) Investigating and responding to cases

The Emergency Temporary Standards require employers to have an effective procedure to investigate COVID-19 cases in the workplace, including procedures to (1) verify COVID-19 case status, (2) receive information regarding COVID-19 test results and the onset of COVID-19 symptoms, and (3) identify and record COVID-19 cases. When there is a positive COVID-19 case, employers must give notice of potential exposure *within one business day* to (1) all employees who may have had exposure and (2) independent contractors and other employers present at the workplace during the high-risk exposure period. Employers must also offer COVID-19 testing at no cost during their working hours to all employees who had potential COVID-19 exposure in the workplace.

6) Exclusion of COVID-19 cases from the workplace

Businesses must prevent any person from entering the workplace who (1) has a positive COVID-19 test or (2) is subject to COVID-19-related order to isolate issued by a local or state health official from the workplace until certain return to work requirements are met.

Employers are required to continue and maintain an employee's earnings, seniority, and all other employee rights and benefits, including the employee's right to their job status. This requirement does *not* apply to any period of time during which an employee is unable to work for reasons other than protecting people at the workplace from possible COVID-19 transmission, where (1) an employer demonstrates that the exposure to COVID-19 is not work related, or (2) an employee is temporarily reassigned to work where the employee does not have contact with other persons until the return-to-work criteria are met.

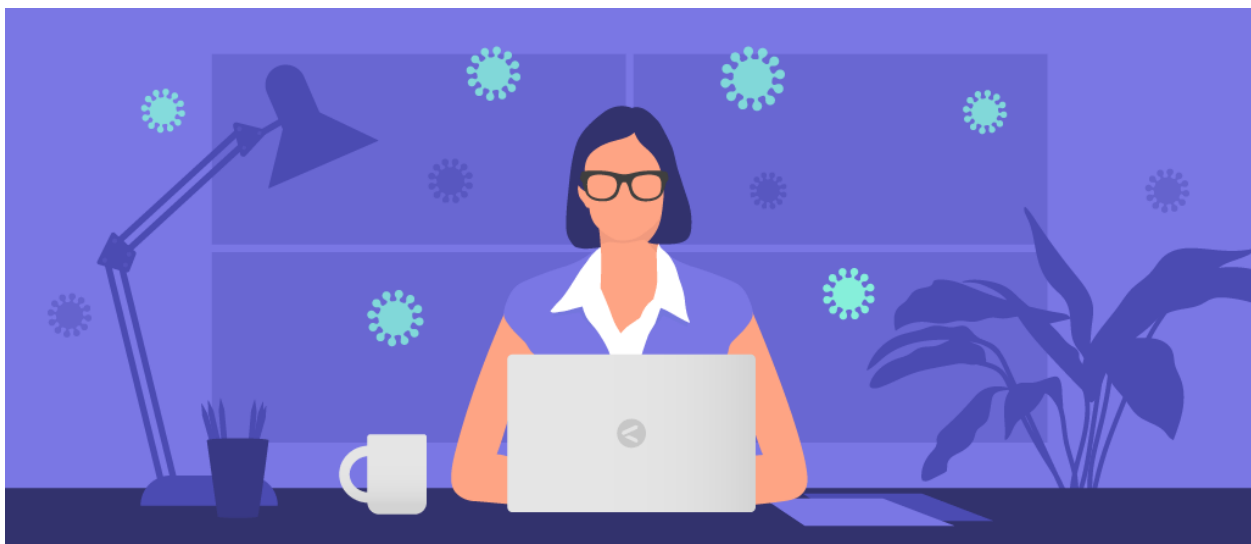
7) Training

Employees must receive training that includes the employer's COVID-19 policies, information related to COVID-19 related benefits, certain facts about COVID-19, methods of physical distancing, the importance of frequent hand washing, proper use of face coverings, and COVID-19 symptoms.

8) Record-keeping and reporting

Employers must maintain records of (1) the steps taken to implement the WCPP and (2) all COVID-19 cases. Employers must make those records available to employees or their authorized representatives.

COVID-19 cases in the workplace must be reported to the local health department whenever (1) it is required by law and (2) any COVID-19-related serious illnesses or death of employees in the workplace or in connection with employment must be reported to Cal/OSHA.



How will these new regulations be enforced?

Non-compliance with these new regulations can result in a fine from Cal/OSHA. The five different classifications of citations (Regulatory, General, Serious, Repeat, and Willful) result in different penalty amounts. Due to the gravity of COVID-19, most violations of the Emergency Temporary Standards will likely be classified as “Serious,” with a maximum penalty of \$25,000 per violation. Cal/OSHA will “consider an employer’s good faith efforts” in working towards compliance to implement the new Emergency Temporary Standards. But certain elements are essential, such as eliminating hazards and implementing testing requirements during an outbreak.

In the last four months, Cal/OSHA has issued \$1,532,110 of penalties relating to COVID-19. The average company inspected [by Cal/OSHA](#) has had three violations with proposed penalties averaging \$28,372.

Are these new regulations subject to change?

The Board acknowledged that the Emergency Temporary Standards have flaws and requested that Cal/OSHA convene an advisory committee meeting to work on improvements with stakeholders. Cal/OSHA plans to hold a stakeholder meeting in December to explain the Emergency Temporary Standards, answer questions, and give interested parties an opportunity to provide feedback. Soon after the stakeholder meeting, an advisory committee meeting will be scheduled. Changes to the Emergency Temporary Standards may result.

Conclusion

The new California OSHA regulations are complex. Companies must create a Written COVID-19 Prevention Plan that meets the state’s onerous requirements and enact specific procedures and protocols. SixFifty collaborated with the law firm Wilson Sonsini to create [an affordable solution](#) to help companies comply with the new regulations. The goal is to level the playing field and give small and medium sized businesses the same world-class compliance resources as the biggest companies in the world, at a price they can afford.