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Emergency Webinar: Understanding The New California OSHA COVID-19 Regulations

COVID-19 Emergency Temporary Standards (ETS)

- On June 17, 2021, the California Occupational Safety and Health Standards Board (Standards Board) voted to update the COVID-19 Emergency Temporary Standards (ETS), 8 CCR §§ 3205-3205.4.
- [Executive Order N-09-21](#) permitted the revised ETS to take effect the same day.
- <https://www.gov.ca.gov/wp-content/uploads/2021/06/6.17.21-ETS-EO-N-09-21.pdf>

Important Changes in the June 17 revised ETS

- Fully vaccinated employees without symptoms do not need to be tested or quarantined after close contacts with COVID-19 cases.
- No face covering requirements outdoors.
- Fully vaccinated employees may be allowed to forego face coverings indoors, in most situations.
- Employers must provide unvaccinated employees with approved 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.

Important Changes in the June 17 revised ETS

- No physical distancing or barrier requirements regardless of employee vaccination status with the following exceptions:
 - During an outbreak, at employer's discretion (**3 or more cases** in an exposed group of employees)
 - During a major outbreak (no discretion) (**20 or more cases** in an exposed group of employees)
- No physical distancing requirements whatsoever in employer-provided housing or transportation.
- Where all employees are vaccinated in employer-provided housing and transportation, employers are exempt
- Employers must evaluate ventilation systems to maximize outdoor air and increase filtration efficiency, and evaluate the use of additional air cleaning systems

Remaining requirements in place from November 2020 ETS

- An effective written COVID-19 Prevention Program.
- Training and instruction to employees on the employer's prevention plan and their rights under the ETS.
- Providing notification to public health departments of outbreaks.
- Providing notification to employees of exposure and close contacts.
- Requirements to [offer testing](#) after potential exposures.
- Requirements for responding to COVID-19 cases and outbreaks.
- Quarantine and exclusion pay requirements.
- Basic prevention requirements for employer-provided housing and transportation.

What about physical distancing requirements?

- Physical barriers and distancing are eliminated regardless of vaccination status. There are several exceptions that may apply:
 - Employers may implement social barriers or distancing at their option.
 - Employers must continually assess workplace hazards and implement controls to prevent transmission of disease, including determining whether physical distancing is necessary in their workplace.
 - During an outbreak (**3 or more employees** in an exposed group), employers are required to evaluate whether physical distancing or barriers are necessary to control the transmission of COVID-19.
 - Physical distancing and barriers **must be used** in a major outbreak (**20 or more employees** in an exposed group) for all employees, regardless of vaccination status.

To Mask or Not to Mask

- All unvaccinated employees must mask indoors
- All employees regardless of vaccination status on public transit, K-12 educational facilities, health care and long-term care settings, correctional and detention facilities, and shelters (homeless or emergency shelters) must mask
- Though face coverings are not required outdoors, employers must communicate to workers that face coverings are recommended for unvaccinated persons outdoors where six feet of physical distancing cannot be maintained
- Employers must provide respirators to unvaccinated employees upon request

Any exceptions to masking?

- The most common exceptions for unvaccinated persons are:
 - When alone in a room or vehicle
 - When eating and drinking
 - When an accommodation is required
 - When job duties make a face covering unfeasible or create a hazard
- **Remember: anyone may choose to wear a face mask and may not be retaliated against for doing so**

Fully vaccinated employees

- Vaccination status must be documented. Acceptable options include:
 - Employees provide proof of vaccination (vaccine card, image of vaccine card or health care document showing vaccination status) and employer maintains a copy.
 - Employees show proof of vaccination. The employer maintains a record of the employees who presented proof, but not the vaccine record itself.
 - Employees self-attest to vaccination status and employer maintains a record of who self-attests.
- Nothing in the revised ETS prevents an employer from requiring all employees to wear a face covering instead of having a documentation process.
- Anyone who “declines to state” will be treated as unvaccinated

Covid-19 testing requirements under revised ETS

- Employers must offer testing at no cost to employees during paid time to:
 - Symptomatic unvaccinated employees, regardless of whether there is a known exposure. This is a new requirement.
 - Unvaccinated employees after an exposure.
 - Vaccinated employees after an exposure if they develop symptoms.
 - Unvaccinated employees in an outbreak.
 - All employees in a major outbreak.

Penalties?

- Employers should implement the June 17 ETS as soon as possible.
- Employers can continue to require face coverings for all employees while they determine vaccination status.
- Provide respirators or take alternative measures to protect unvaccinated employees.