

CalOSHA ISSUES REVISED EMERGENCY COVID-19 RELATED STANDARDS, THE EEOC ISSUES COVID-19 VACCINE INCENTIVE-RELATED GUIDANCE, PLUS MORE!

The Standards Board of California’s Division of Occupational Safety and Health (CalOSHA) recently approved draft revisions to the [COVID-19 Emergency Temporary Standard \(ETS\)](#), which are to be finalized by the agency. It should be noted that while some of these updates are helpful clarifications, the Board noted that some of its approved changes conflict with the Center for Disease Control’s (CDC) guidelines, so readers should continue to monitor for further updates. These updates will likely go into effect on or before June 15, 2021, and remain in effect until January 2022, unless further revoked or amended. For more information on the ETS and to view the final ETS once published, please visit [CalOSHA’s COVID-19 resources webpage](#).

While most of the ETS will likely remain unchanged from previous versions, some important revisions are discussed below:

NEW AND USEFUL DEFINITIONS

Changes to the ETS include some newly defined and useful terms, including:

- “Fully vaccinated” means the employer has “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. While “documentation” is not defined, it is likely the agency will provide guidance on what this means, including whether or not an employee attestation as to their vaccination status will suffice.
- “Outdoor mega event” means an event that includes over 10,000 participants or spectators outdoors and may include conventions, shows, outdoor nightclubs, concerts, sporting events, theme parks, fairs, festivals, large races, and parades.
- “Respirator” is defined as a respiratory protection device approved by the National Institute for Occupational Safety and Health (NIOSH) to protect the wearer from particulate matter, such as an N95 respirators. Respirators must also otherwise comply with additional [Cal/OSHA respiratory protection standards](#).

FACE COVERINGS AND RESPIRATORS

The majority of face covering requirements within the ETS remain unchanged and, in general, employees must continue wearing face coverings in the workplace beyond June 15, 2021.

Employers may eliminate face covering requirements for “fully vaccinated employees,” as long as all persons in the room are likewise fully vaccinated and asymptomatic, and when a fully vaccinated person is outdoors and asymptomatic. Employers may also eliminate face covering

requirements for those employees who have medical, mental health, or disability-related reasons, remain socially distanced, are fully vaccinated, or test weekly at the employer's expense.

Further, starting on **July 31, 2021**, employers must provide respirators to all employees who are not fully vaccinated and are required to work indoors or at outdoor mega events. Use of the respirators is voluntary, although face coverings must continue to be worn. There are also newly imposed training requirements for instances when respirators are provided and used.

Employers may not prevent employees from voluntarily wearing a face covering at any time, unless it would create a safety hazard, such as interfering with the safe operation of equipment.

PHYSICAL DISTANCING INDOORS AND AT OUTDOOR MEGA EVENTS

Until **July 31, 2021**, all employees working indoors or at outdoor mega events (defined above) must continue to maintain social distancing unless they follow either of the following protocols:

- **Protocol One:**
 - Employees are wearing respirators (defined above) required by the employer and used in compliance with [Cal. Code Regulations, Title 8, Section 5144](#);
 - Where six feet distance is not feasible (but employees must be as far apart as possible); or
 - During momentary exposure while employees are in movement.
- **Protocol Two:**
 - All employees who are not fully vaccinated (defined below) shall be provided respirators for voluntary use in compliance with Cal. Code Regulations, Title 8, Section 5144(c)(2) (use link above).

Finally, if an employee is at the same workstation for extended periods and distancing cannot be maintained, solid partitions that reduce transmission and are cleanable must be installed. Employers must also maximize ventilation through natural and mechanical means unless it would pose a hazard to employees.

OTHER ETS UPDATES

The ETS also updated requirements regarding employer-funded testing, including no longer requiring testing for employees who are fully vaccinated, outbreak protocol, and rules related to employers providing housing or transportation to employees.

Finally, the ETS continues to require a written COVID-19 Prevention Program, which details, among other things:

- A method of reporting symptoms and Covid-19 positive cases;
- A process for screening employees, which can include a self-screening prior to work;

- For indoor locations, how to evaluate and maximize ventilation; and
- A process for contact tracing positive cases and notification requirements.

As with the prior ETS publication, it is likely CalOSHA will promulgate an updated COVID-19 Prevention Program template, along with FAQs and, hopefully, other useful forms, all of which will be found [here](#) when available.

OTHER PUBLIC HEALTH ORDERS AND EEOC GUIDANCE RELATED TO INCENTIVIZING COVID-19 VACCINATION

In addition to taking these changes into account, including updating associated COVID Prevention Plans, employers need to think about local health ordinances that may require additional COVID-19 protocols. For example, in a move that may signal a trend, Santa Clara County's [Public Health Order](#) now requires businesses to determine and record the vaccination status of employees coming back to worksites.

Finally, [the EEOC issued guidance](#) to employers offering or thinking about offering limited incentives to employees to be vaccinated, so long as the incentives are not so substantial as to be coercive.

If you have any questions, please do not hesitate to contact us! It would be our pleasure to advise you.