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Major COVID-19 Updates This Week

Once again, the State has announced major COVID updates this week. For starters, on Monday October 17, 2022 Governor Newsom announced that the California COVID-19 State of Emergency (SOE) will (supposedly) end February 28, 2023. However, he indicated that as the SOE ends, the California “SMARTER Plan continues to guide California’s strategy to best protect people from COVID-19.” You can find the Governor’s full press release [here](#). In collaboration with this announcement, the California Department of Public Health (CDPH) [updated](#) its “SMARTER” Plan. Of note in the update is the reference to the [Guidance for the Use of Face Masks](#) which recommends face masks based on the federal Center for Disease Control’s (CDC) COVID-19 Community Level parameters.

In other news, this week is the first full week of employers facing the CDPH’s updated [definition](#) of “close contact” which went into effect October 14, 2022. The update relates to the CDPH’s isolation and quarantine periods for persons infected with or exposed to COVID-19.

- "Close Contact" now means the following:
 - In indoor spaces of 400,000 or fewer cubic feet per floor (such as home, clinic waiting room, airplane etc.), a close contact is defined as **sharing the same indoor airspace for a cumulative total of 15 minutes or more over a 24-hour period** (for example, three separate 5-minute exposures for a total of 15 minutes) during an infected person's (confirmed by COVID-19 test or clinical diagnosis) infectious period.
 - In large indoor spaces greater than 400,000 cubic feet per floor (such as open-floor-plan offices, warehouses, large retail stores, manufacturing, or food processing facilities), a close contact is defined as **being within 6 feet of the infected person for a cumulative total of 15 minutes or more over a 24-hour period** during the infected person's infectious period.

Spaces separated by floor-to-ceiling walls (e.g., offices, suites, rooms, waiting areas, bathrooms, or break or eating areas that are separated by floor-to-ceiling walls) must be considered distinct indoor airspaces. For the purposes of identifying close contacts and exposures, employers no longer must consider infected persons who test negative on or after Day 5 and end isolation to be within their infectious period. However, individuals should still follow isolation and mask recommendations. The updated “close contact” definition applies to the existing Cal/OSHA Emergency Temporary Standard (ETS) for purposes of workplace exclusions, isolation, and quarantine.

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Lastly, Employers should not get too excited about the end of the SOE because the Cal/OSHA Standards Board continues to pursue its semi-permanent COVID regulation as the ETS is set to expire at the end of this year. On Friday, Cal/OSHA released a draft two-year COVID-19 regulation which they will vote on in December. Employers wishing to provide comment on the proposed regulations can do by contacting the Cal/OSHA Occupational Safety and Health Standards Board directly by 5:00 p.m. on October 31, 2022. The draft language has some noticeable differences from previously proposed versions and the existing ETS. You can find the full proposal [here](#), however, we have outlined the major changes for you:

- Update to incorporate CDPH's new "close contact" definition as discussed above;
- Revisions to the definition of "exposed group" no longer require employees passing through an area to wear a face covering to avoid being part of the exposed group;
- Reduction in the time period, from 90 to 30 days, during which you can designate an individual as a "returned case";
- When evaluating ventilation issues, Employers must now "develop, implement, and maintain effective methods to prevent transmission of COVID-19" rather than simply evaluate ventilation issues;
- As a slight relief to Employers, the proposed language removes the requirement to report COVID-19 cases to the local health department;
- No requirement to maintain records of individuals identified as having close contact;
- Changes the threshold for determining the end of an outbreak from no COVID-19 cases in the exposed group for a 14-day period to one or fewer COVID-19 cases in the same time frame;
- When an outbreak occurs, employers no longer must "immediately" preform a review of COVID-19 policies but must still perform the review when an outbreak occurs and "periodically" thereafter.

Also of note is the continued absence of any exclusion pay requirement in this semi-permanent regulation, thus signaling that exclusion pay will (hopefully) end later this year with the ETS.

What This Means for Employers:

There is potentially an end in sight for the State of Emergency, however that does not mean we will see an end to COVID-19 regulations in the workplace. For now, employers must continue to follow the ETS in its entirety, including providing exclusion pay where required. However, employers should carefully review the new "close contact" definition to ensure proper evaluation, notification and exclusion of close contacts where necessary. Feel free to contact the attorneys at Barsamian & Moody to address any concerns over the implications of the new definition on your workplace.

The goal of this article is to provide employers with current labor and employment law information. The contents should neither be interpreted as, nor construed as legal advice or opinion. The reader should consult with Barsamian & Moody at (559) 248-2360 for individual responses to questions or concerns regarding any given situation.