

Cal/OSHA Engages in Arbitrary Action

By Robert P. Roy, President/General Counsel - Ventura County Agricultural Association

Without any public notice or publicity of any kind, Cal/OSHA published a new workplace poster on July 9, 2020, [copy enclosed in English] regarding “Face Coverings, Masks & Respirators”. For the first time, the State is now requiring that “employers must provide face coverings for workers or reimburse them for the reasonable cost of obtaining them.” The poster also stipulates that the “general public [and] most workers” should use reusable **cloth face** coverings.

During this pandemic, VCAA has issued precautionary recommendations that employers provide face masks in the workplace in light of the California’s general safety laws. [See, Labor Code Sections 6400, 6401, 6402 and 6403.] Nevertheless, the general consensus within the industry prior to the issuance of this poster was that cloth face coverings were not the type of item that an employer would have to provide or pay for, in light of the fact that several agencies had said that cloth face coverings were not considered to be “personal protective equipment” (PPE). The requirement to provide or pay for cloth face coverings also goes against the standard in the IWC Wage Order 14-2001, Section 9, that employers need not pay for items that are not required by the employer or that aren’t necessary to performance of the job.

VCAA recommends that you post a copy of the enclosed document poster at your ranches and include it in your addendum to your Injury and Illness Prevention Program. It should also be provided to employees in any up-coming safety tailgate meeting.

- is difficult and workers are in close contact (within 6 feet for fifteen minutes or more) with co-workers or the public; in places in remote settings where medical evaluation or treatment may be delayed; workplaces where continuity of operations is high priority (e.g., critical infrastructure job sectors); and workplaces providing congregate housing for employees, e.g., farmworker housing or camps.

Suggested approaches may include initial testing of all workers before entering a workplace, periodic testing of workers at regular intervals, and/or targeted testing of new workers or those workers returning from a prolonged absence.

CDC recommends that before testing a large proportion of asymptomatic workers without known or suspected exposure, employers are encouraged to have a plan in place for how they will modify operations based on test results and manage a higher risk of false positive results in a low prevalence population.