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Updated Cal/OSHA Emergency Temporary Standard (ETS) Regarding Fully Vaccinated Employees

By now everyone should be familiar with the Cal/OSHA Emergency Temporary Standards (ETS) that went into effect last year. On May 3, 2021, the California Department of Public Health (CDPH) issued updated guidance and clarification related to fully vaccinated individuals which reflects recent guidance from the Centers for Disease Control and Prevention (CDC). Generally, this guidance relates to COVID-19 prevention guidance for individuals in their private lives, however the CDPH made clear that certain provisions apply to the ETS and to fully vaccinated individuals in the workplace.

As a brief background, the ETS applies to most workers in California and requires most employers to establish, implement, and maintain an effective COVID-19 Prevention Program and to provide appropriate training to employees. By way of the ETS, Cal/OSHA established a multitude of rules regarding employee social distancing, face coverings, testing, workplace exclusion, quarantine, vaccinations, prevention training, hazard assessment and specific rules for employer provided housing and transportation. More information about the ETS can be found at www.dir.ca.gov/dosh/coronavirus/ETS.html.

Relevant here, the ETS requires that employees with work related COVID-19 exposure be excluded from the workplace for 14 days after the last known exposure to a COVID-19 case. Under the recent CDPH guidance, fully vaccinated employees are no longer subject to automatic quarantine (referred to as exclusion in the ETS) following a known exposure at work so long as they remain asymptomatic. However, employers subject to the ETS must continue to enforce all other provisions of the ETS including face coverings and testing requirements. All employees, even fully vaccinated individuals, must be excluded from the workplace pursuant to the ETS if they test positive for COVID-19.

According to the CDPH, an individual is fully vaccinated two weeks or more after they have received the second dose in a 2-dose series (Pfizer-BioNTech or Moderna), or two weeks or more after they have received a single-dose vaccine (Johnson and Johnson [J&J]/Janssen).

What This Means for Employers:

Many employers and employees have expressed frustration that full vaccinated employees are required to comply with the extensive ETS rules. Unfortunately, the CDPH guidance does not relax many requirements for fully vaccinated individuals in the workplace. Although the CDPH explicitly states that the guidance applies to the ETS, Cal/OSHA has not yet amended the ETS or its FAQ's to indicate the change. However, pursuant to Governor Newsom's December [Executive Order](#) addressing the ETS quarantine requirements, the quarantine period recommended by the CDPH supersedes

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the longer existing ETS quarantine period and therefore the CDPH guidance relating to the exclusion or quarantine of fully vaccinated workers is effective immediately as it relates to the ETS.

Based upon the CDPH guidance, employers may now pause their quarantine practice for fully vaccinated individuals with known exposures to COVID-19. However, employers should continue to enforce all other ETS requirements and follow CDC guidelines for both fully vaccinated and unvaccinated individuals. We expect more guidance, and hopefully some relaxation of the ETS requirements for fully vaccinated workers as research continues and as vaccination programs continue.

The full text of the May 3, 2021 CDPH release can be found here: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID-19-Public-Health-Recommendations-for-Fully-Vaccinated-People.aspx#>

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.