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Revised Emergency Temporary Standards (ETS) Are Coming Soon

Yesterday (June 3), the Occupational Safety and Health Standards Board voted to approve a number of revisions to Cal/OSHA's COVID-19 prevention Emergency Temporary Standards (often referred to as the "ETS"), after first rejecting them earlier in the day. Last week, we sent out an update concerning these proposed revisions. Our prior update is now applicable because the Standards Board voted to adopt the proposed revisions to the ETS in full. A copy of our prior update is attached.

As a recap of how we got here, Cal/OSHA adopted the original ETS in November 2020. The original ETS contained a number of complicated requirements for employers to follow with regard to face coverings, social distancing, testing, quarantining, exclusion pay, outbreaks, and more. However, because the original ETS was adopted prior to the widespread availability of COVID-19 vaccinations, the ETS did not address any vaccination-related issues.

On May 13, the federal Centers for Disease Prevention and Control (CDC) issued guidance stating that vaccinated individuals "can resume activities without wearing a mask or physically distancing." Similarly, Governor Newsom announced that the state would follow the CDC's guidance starting June 15, 2021. As such, many employers hoped that Cal/OSHA's revised ETS would follow the CDC and Governor's lead. Unfortunately, the revised ETS does little to ease the burden of complying with the original ETS—this is especially true for employers that have workforces that are not 100% vaccinated.

It seems as if the revision is designed to pressure employers into adopting mandatory vaccination policies, as the State seems particularly interested in achieving as wide-spread vaccination as possible. Keep in mind, however, that while you can legally adopt a mandatory vaccination policy, you would have to go through the interactive process with each employee who request either a religious or medical exemption to the vaccination, and it may never be possible to achieve a 100% vaccinated workforce.

What This Means for Employers:

Employers are strongly encouraged to review the text of the revised ETS and our prior update, which covers the notable revisions. Cal/OSHA's COVID-19 webpage on the ETS and the revisions is here: <https://www.dir.ca.gov/dosh/coronavirus/ETS.html>. In terms of next steps, the Standards Board will file the revised ETS with the Office of Administrative Law, which has 10 calendar days to review and approve the revised ETS. Ultimately, it is likely that the revised ETS will be effective no later than June 15. Accordingly, employers must act quickly to familiarize themselves with these revised

requirements. If you have any questions about the revised ETS and its implications for your workforce, please contact the attorneys at Barsamian & Moody at (559) 248-2360.

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.