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## **UPDATE: Cal/OSHA's New Emergency Standard Approved**

The California Occupational Safety and Health (Cal/OSHA) Standards Board rolled out emergency temporary regulations on COVID-19 prevention governing employers and workplaces on November 19th. The new regulations have been approved by California's Office of Administrative Law and is effective immediately and will expire in six months unless readopted for up to two consecutive 90-day periods. The standard will be known as General Industry Safety Orders §3205.

Among the most onerous requirements is testing. First, the employer must inform exposed employees that testing is available, the reason for the testing and the possible consequences of a positive test. General testing is required when there has been even one positive COVID-19 case in the workplace. In that situation, the employer must offer COVID-19 testing to all employees who have potential COVID-19 exposure in the workplace. Note that all testing provided to employees must be free and must be available during the employee's work hours.

If the workplace has been identified by a local health department as the location of an outbreak, or when there are three or more COVID-19 cases within a 14-day period, then more rigorous testing is mandated. Employers must test all employees in the exposed workplace, and then test them all again one week later. After these first two tests, employers must provide continuous testing of employees who remain in the workplace at least once per week, or more frequently if recommended by the local health department. This continuous testing must take place until there are no new COVID-19 cases detected for a 14-day period.

If the workplace has experienced 20 or more COVID-19 cases within a 30-day period, additional requirements are involved. COVID-19 testing must be provided to all exposed employees twice per week, or more frequently if recommended by a local health department. This twice weekly testing must continue until there are no new COVID-19 cases detected for a 14-day period.

Another area of concern for employers is the strict return-to-work protocol. Following quarantine or isolation due to a positive test, the employer must exclude the employee from work until specific requirements are met. For cases with symptoms, (1) at least 24-hours must have passed since a fever of 100.4+ has resolved without the use of fever-reducing medications, (2) COVID-19 symptoms must have improved, and (3) at least 10 days must have passed since symptoms first appeared. For employees who tested positive for COVID-19 but never developed symptoms, the employee must not return to work until a minimum of 10 days have passed since the date of the specimen collection of their first positive COVID-19 test. If a public health authority issues the order to isolate or quarantine, the employee shall not return to work until either period of isolation or quarantine is lifted. If no period is specified, then the period shall be 10 days

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from the time the order to isolate was effective, or 14 days from the time the order to quarantine was effective. Finally, employers cannot require a negative COVID-19 test for an employee to return to work.

Cal/OSHA's Chief told the Standards Board that "some employers are going to need more time. We intend to fully take that into account in determining how they're implementing the rule." He also assured the regulated community that Cal/OSHA would publish a model COVID-19 Prevention Program, FAQs, and guidance, though these are yet to materialize. And, he noted the Division would consider "good faith" efforts on the part of employers. The Board also indicated it would convene a stakeholder committee to suggest updates to the standard to address the top concerns from employers—information on this committee is still forthcoming.

This continues to be a rapidly developing area that we are closely tracking. Employers should carefully review the new standard in its entirety in order to determine what policies, practices, and procedures need to be immediately implemented to achieve compliance. The full text of the approved text of the standard is available at:

[COVID-19-Prevention-Emergency-apprvdtxt.pdf \(ca.gov\)](#)

*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.*