

# Revised Cal/OSHA COVID-19 Workplace Rules: What Employers Need to Know

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In November 2020, when the pandemic was near its most severe point, the California Department of Occupational Safety and Health (Cal/OSHA) set forth a package of rules designed to create a uniform standard for COVID-19 prevention and outbreak mitigation in the workplace.

These standards, also referred to as Emergency Temporary Standards (ETS), create such rules as requiring employers to draft a written COVID-19 prevention plan, as well as dictating when face coverings must be worn in the workplace, when testing must occur, and when employers must exclude employees from the workplace due to infection or close contact with an infected employee.

## The latest Emergency Temporary Standards revisions went into effect on May 6, 2022.

The original ETS went into effect on November 30, 2020, and — spurred by evolving pandemic circumstances and changing guidance for the general public from the Centers for Disease Control (CDC) and the California Department of Public Health (CDPH) — was revised on June 17, 2021, and again on January 14, 2022.

Most recently, the Occupational Safety and Health Standards Board (OSHSB) — the standards-setting agency within Cal/OSHA — voted for a third readoption of the ETS, which was effective May 6, 2022, and will extend through the end of the year.

As with the previous readoptions, the latest ETS revisions maintain the general ETS framework we've been working under since November 2020, which requires employers to create and implement a written COVID-19 Prevention Program addressing COVID-19-related issues in the workplace. The revised ETS, however, again makes notable changes to several key areas, including testing, face coverings, vaccination, exclusion of employees after exposure and certain definitions.

In general, the changes relax some requirements and specifically defer to the CDPH on certain key issues, likely due to difficulty the ETS had in keeping up with ever-changing pandemic circumstances.

To assist employers in navigating COVID-19-related workplace rules, here are key takeaways on the latest ETS changes.

## Written COVID-19 Prevention Plan

The revised ETS still requires employers to maintain a written COVID-19 Prevention Plan that covers the following subject areas:

1. A system for employers and employees to communicate about COVID-19 issues.
2. Identifying and evaluating COVID-19 hazards.
3. Investigating and responding to COVID-19 cases in the workplace.
4. Correcting COVID-19 hazards.
5. Training and instruction on COVID-19-related issues.
6. Face coverings.
7. Other infection control measures and personal protective equipment (PPE).
8. Reporting, recordkeeping and access.
9. Exclusion of COVID-19 cases.
10. Return to work criteria.

## Several of the rules contained in the mandatory written COVID-19 Prevention Plan have been modified.

This is the basic framework employers have been operating under since the original ETS took effect in 2020; however, as explained in this white paper, several rules have been modified or eliminated altogether. Employers should review the ETS and related Cal/OSHA guidance in detail and consult with legal counsel about making any necessary changes to their COVID-19 Prevention Programs.

### Updated Definitions

Many new changes include updates to definitions in the ETS that, in large part, drive some of the protocols employers must follow. The significant definitional changes include:

- **“COVID-19 Hazard”** is updated to eliminate any references to objects or surfaces that may be contaminated with COVID-19, meaning those areas are no longer considered COVID-19 hazards for ETS purposes. Along with this change, no longer do any cleaning and disinfecting requirements exist under the ETS.
- **“COVID-19 Test”** is updated to allow the use of a self-administered, self-read COVID-19 test as long as the result includes additional independent verification, such as a time-stamped photograph. This broadens the use of at-home tests for ETS purposes, as previously these had to either create digital records verifying the results or the tests had to be proctored by an employer or telehealth provider.
- **“Face Covering”** is updated to remove the much maligned “light test” requirement for compliant cloth masks. In the current ETS, cloth masks can’t allow light to pass through when held up to a light source. While the new ETS revision omits this requirement, it does state that cloth masks must still be made of a tightly woven fabric or non-woven material of at least two layers.

- **“Returned case”** is a new definition that describes an employee who contracted COVID-19 but recovered. For these purposes, a returned case is someone who has returned to work from an infection and is still within 90 days from either the onset of symptoms or the positive test if no symptoms developed. Because this returned case concept previously has been in the ETS, however, no changes to employer’s policies should be necessary.

Also noteworthy is that the ETS **eliminates the definition of “fully vaccinated” employees** because ETS rules no longer hinge on their own definition of fully vaccinated employees.

## Face Coverings

Face coverings have been among the most confounding workplace rules for employers. The ETS often lagged behind CDPH guidance on face coverings, prompting Governor Gavin Newsom to issue an executive order on March 1, 2022, ultimately suspending the general face covering rule in the ETS to bring the ETS in line with CDPH recommendations.

Rather than go through that process again, the revised ETS simplifies face covering rules by eliminating the general indoor face covering requirement entirely and deferring to the CDPH on when face coverings should be required.

## The ETS now defers to the CDPH for face covering recommendations.

CDPH orders dictate who must wear face masks and when to wear them. Currently, CDPH doesn’t mandate any employee wear face coverings; however, as we have seen throughout the pandemic, this can change at any moment.

While no general indoor face covering requirement exists at the moment, there are still certain instances in which the ETS requires face coverings. For example, employers must ensure face coverings are worn when there are COVID-19 outbreaks in the workplace (three or more COVID-19 cases in an exposed group), in certain return-to-work circumstances (discussed below), and when screening employees for COVID-19 symptoms while indoors.

For those limited circumstances in which face coverings are still required, the revised ETS made some minor changes.

For example, when face coverings are required, the ETS has always had an exception for those who can’t wear face coverings due to a medical or mental health condition, disability, or if specific tasks cannot be feasibly performed with a face covering . Under those exception, the previous ETS required those employees to physically distance at least six feet from others and either be fully vaccinated or tested at least weekly for COVID-19. The latest revisions remove the distancing and vaccination requirements, but still requires those individuals to test weekly.

Additionally, the revised ETS changed the definition of face covering, removing the so-called “light test” for face coverings made of tightly woven fabric or non-woven material. While the light test is gone, the ETS does state that cloth masks must still be made of a tightly woven fabric or non-woven material of at least two layers.

Though the ETS has done away with universal indoor face coverings, employers should continue to monitor CDPH face covering guidance for more restrictive face covering rules. At this time, CDPH guidance doesn't require universal indoor face coverings, but it still requires indoor masking for all individuals, regardless of vaccination status, in certain indoor spaces, including:

- Emergency shelters and cooling and heating centers.
- Health care settings.
- State and local correctional facilities and detention centers.
- Homeless shelters.
- Long-term care settings and adult and senior care facilities.

Additionally, local jurisdictions may institute health orders with universal indoor face covering requirements beyond what is required by the ETS. Employers should continue to monitor state and local rules in addition to Cal/OSHA's ETS.

## Upon request, employers must provide N95 respirators, regardless of vaccination status.

### N95 Respirators

The revised ETS maintains the respirator requirements established in the previous version of the ETS, but it removes any reference to vaccination status. This means employers, upon request, must provide N95 respirators to any employee who works indoors or in a vehicle and requests one, regardless of vaccination status.

Employers must also continue to provide N95s to any exposed employees during a "major outbreak." N95 respirator use in either situation is voluntary. The employer must provide an N95 that is the correct size, and the employee must receive basic instruction on how to create an appropriate seal around the nose and mouth.

An employer should provide a requested N95 respirator as soon as possible and, in the case of a "major outbreak," must do so immediately and without request from an employee.

Cal/OSHA guidance also reminds employers that filtering facepiece respirators can't be cleaned or disinfected, so they must be replaced if they get damaged, deformed or dirty, or become difficult to breathe through. Cal/OSHA recommends providing a new N95 respirator at the beginning of each shift to employees who request one and having employers follow the manufacturer's instructions.

To assist employers with compliance, California has set up a [website](#) where businesses may sign up to receive a one-month supply.

## Testing

Under the latest ETS revisions, the testing rules remain largely unchanged. Employers must make testing available during paid time to the following employees under the following circumstances:

- Symptomatic employees regardless of vaccination status;
- All employees who are close contacts with a known COVID-19 case, except to those “returned cases;”
- Employees who cannot wear face coverings under a valid exception must be tested once a week; and
- All employees weekly during an outbreak or major outbreak until the employer no longer has any cases in a 14-day period.

## New ETS regulations clarify the requirements for using at-home COVID-19 testing.

The testing rules apply regardless of vaccination status.

The revised ETS also makes minor revisions to the definition of COVID-19 test. Under the ETS, a valid COVID-19 test:

- Must be cleared, approved or authorized by the FDA;
- Must be administered according to authorized instructions; and

May be both self-administered and self-read only if another means of independent verification of the results can be provided (e.g., a time-stamped photograph of the results).

## Excluding Employees from the Worksite

Another notable ETS revision deals with exclusion of close contacts.

Under the previous COVID-19 ETS, employers were required to exclude from the workplace COVID-19 cases and employees who had a “close contact” with a COVID-19 case. And it also provided certain exceptions for close contacts that were fully vaccinated.

Under the new revisions, however, the ETS does away with the complicated close contact criteria. As of May 6, 2022, the ETS doesn't require automatic exclusion of close contacts. Instead, the ETS defers to the CDPH on how to handle close contacts, stating that employers must review current CDPH guidance for persons who had close contact, including any guidance regarding quarantine or other measures to reduce transmission. It also states that employers must develop, implement and maintain effective policies to prevent transmission of COVID-19 by persons who had close contacts.

Because the ETS now defers to the CDPH on close contacts, employers should closely monitor CDPH guidance and orders as they may change at any time. At the time of publication, CDPH guidance states that asymptomatic close contacts don't need to be excluded. Close contacts who develop symptoms, however, must be excluded until negative test results are obtained or for 10 days. Employers can review the latest guidance in the Cal/OSHA Fact Sheet [COVID-19 Isolation and Quarantine - What Employers and Workers Need to Know](#).

One thing that hasn't changed with these new revisions is that employers must provide exclusion pay to those excluded under the ETS — meaning the ETS requires employers to maintain the earnings, at the regular rate of pay, and benefits of employees excluded from the worksite because of a workplace COVID-19 exposure, subject to certain exceptions (such as when the excluded employee is teleworking, where the employee received disability payments or temporary disability covered by workers' compensation, or when the close contact is not work related).

## Return to Work

The second readopted ETS had a complex return to work protocol that was almost never used because the CDPH created a completely different set of [isolation and quarantine rules](#) that applied to the ETS through [Executive Order N-84-20](#). In this new revision, Cal/OSHA essentially codified the CDPH isolation and quarantine rules.

## Return-to-work criteria changed to reflect latest CDPH isolation and quarantine recommendations.

COVID-19 cases, regardless of vaccination status or previous infection who do not develop COVID-19 symptoms or whose COVID-19 symptoms are resolving, can't return to work until:

1. At least five days have passed from the date that COVID-19 symptoms began or, if the person does not develop COVID-19 symptoms, from the date of first positive COVID-19 test;
2. At least 24 hours have passed since a fever has resolved without medications; and
3. A negative COVID-19 test from a specimen collected on the fifth day or later is obtained;

If the employee is unable to test or the employer chooses not to require a test on the fifth day or later, or COVID-19 symptoms are not resolving in that time frame, the employee must remain out for 10 days from the onset of symptoms or from the date of the first positive COVID-19 test if asymptomatic.

The updated ETS doesn't require employers to automatically exclude close contacts from the workplace, so the complex return to work criteria for close contacts has been eliminated. However, as previously discussed, the ETS now defers to CDPH on close contact recommendations. At the time of publication, CDPH recommends that close contacts who become symptomatic should be excluded until they obtain negative test results or for 10 days. Employers should continue to monitor Cal/OSHA and CDPH quarantine and isolation guidance for any changes.

## Notice Requirements

COVID-19 notice requirements remain largely the same under the latest ETS revisions. Employers must continue to provide to all employees and independent contractors who were on the premises at the same worksite as a COVID-19 case during the infectious period a timely, written notice of the potential exposure within one business day, as well as the employer's cleaning and disinfection plan. Employers must provide notice in the manner the employer normally uses to communicate employment-related information. If the employer knows the employees didn't receive the written notice, or that the employee has limited literacy in the language used in the notice, the employer must also provide verbal notice as soon as practicable in the language understood by the employee.

Employers must also provide the notice required by California's COVID-19 notice law (Labor Code sec 6409.6) to the employees' authorized representative, if any, of the COVID-19 case, employees who had close contact, and the employer's cleaning and disinfection plan.

Additionally, for any employee who had close contact with the COVID-19 case, employers must also provide the employee with information regarding COVID-19 related benefits to which the employee may be entitled under federal, state or local laws, including sick leave, vaccination leave, workers' compensation law (if applicable), local government requirements and the employer's own policies.

CalChamber members can use the [COVID-19 Workplace Exposure Notification Checklists](#) to ensure they comply with all the state's COVID-19 notification requirements.

## Resources

To assist with compliance, Cal/OSHA maintains an [ETS resource page](#) with a set of fact sheets and FAQs with detailed information on the ETS. Cal/OSHA also provides a model COVID-19 prevention program to assist employers in drafting and revising their own programs. Cal/OSHA's guidance provides an excellent resource for employers, but if any questions arise specific to an employer's workplace, the employer should consult with legal counsel.

Visit HRCalifornia's [Local Ordinances](#) section for detailed information on local employment-related ordinances in California, including COVID-19-related ordinances. For all other COVID-19-related news and information, please visit CalChamber's [COVID-19 Resources Page](#).

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 *Injury and Illness Prevention Program*

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To learn more about CalChamber resources, please call our Customer Service Representatives at (800) 331-8877, Monday through Thursday from 8 a.m. to 5 p.m. PT, and on Friday from 8 a.m. to 4 p.m. PT.

