

BLOG

California OSHA ETS in Effect Through April 14, 2022

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California Division of Occupational Safety and Health (Cal/OSHA) readopted the [California COVID-19 Prevention Emergency Temporary Standards](#) (Cal/OSHA ETS) on January 14, 2022 and it will remain in effect until April 14, 2022. The readopted Cal/OSHA ETS retains most of the key provisions of the prior versions with several revisions. Read on for more information.



Background - Cal/OSHA ETS

Since California has an approved State Plan for workplace safety purposes under federal OSHA, California administers its own workplace safety and health plan. This means that most private employers in California are subject to Cal/OSHA regulations, rather than federal OSHA.

As an approved State Plan, Cal/OSHA is required to adopt standards that meet or exceed federal OSHA standards, including emergency temporary standards. Further, Cal/OSHA may enact standards that are more protective of workers than federal OSHA rules require.

In November 2020, Cal/OSHA adopted the Cal/OSHA ETS for workplace COVID-19 prevention and safety measures. The Cal/OSHA ETS was readopted in June 2021. The most recent readoption of the Cal/OSHA ETS became effective on January 14, 2022 and will expire on April 14, 2022.

Cal/OSHA ETS Readoption

On January 24, 2022, Cal/OSHA released new [FAQ guidance](#) in connection with the readopted Cal/OSHA ETS, providing additional insight into employer obligations under the Cal/OSHA ETS.

Highlights of the January 14, 2022 Cal/OSHA ETS revisions include the following:

- **COVID-19 Test Definition:** The definition of "COVID-19 test" now includes specific instructions for workers using over-the-counter (OTC) tests with self-read results. The employer or an authorized telehealth proctor must observe the use of the test by the employee, including by video. An OTC

test that uses digital reporting of date and time stamp results is also permissible for these purposes, without the employer or telehealth proctor observation requirement.

- **Face Covering Definition:** The definition of “Face covering” now includes language requiring cloth masks to not let light pass through when held up to a natural light source with an exception for clear face coverings or face coverings with a clear plastic panel as necessary for certain individuals.
- **Fully Vaccinated Close Contacts Unable to Test:** Close contacts who are fully vaccinated (regardless of booster status) and cannot test on or after day five must wear a face covering and maintain distance of six feet from others for 14 days after exposure.
- **Testing for Close Contact Employees:** Employers are required to provide COVID-19 testing to potentially exposed employees with a close contact in the workplace, regardless of vaccination status, at no cost and during working hours, except for recently recovered employees¹

As a reminder, below are the important requirements from the previous Cal/OSHA ETS version that remain in effect and must be incorporated into California employers’ workplace safety programs:

- Establish and implement a documented COVID-19 prevention program and provide training to employees on how COVID-19 is spread and infection prevention techniques.
- Provide notification to employees regarding their rights under the Cal/OSHA ETS, including any COVID-19 benefits that employees may be entitled to under applicable federal, state or local laws.
- Provide notification to public health departments regarding COVID-19 outbreaks -
 - Outbreak is defined as three or more employee positive cases present at a worksite during a 14-day period
 - Major outbreak is defined as 20 or more employee positive cases present at a worksite during a 30-day period
- Provide notification to employees of exposure and close contacts -
 - Close contact is defined as within six feet of a COVID-19 case for a cumulative total of 15 minutes or more in any 24-hour period.
 - Notification, written in plain language that is easily understandable by all workers, must be provided within one business day to all employees (and their union representatives, as applicable) and independent contractors who were present at the worksite at the same time as the positive COVID-19 case. Notification cannot reveal any personal identifying information of the worker who tested positive and may be distributed via email, text message or other means as long as employers can anticipate that the notice will be received by these workers within one business day of sending.
- Provide COVID-19 testing at no cost to employees who contract COVID-19 in the workplace or come into close contact with a positive COVID-19 employee in the workplace, including reimbursement of

employee testing expenses related to:

- over-the-counter test kits
- applicable copayments or cost-sharing under a health plan for receiving a test
- travel costs to and from testing facilities (i.e. mileage or public transportation costs) for non-exempt employees
- time spent traveling to and from testing facilities for non-exempt employees
- time spent getting tested for non-exempt employees
- Provide exclusion pay to in-person employees required to isolate/quarantine from their in-person work to the extent that they are unable to perform their work remotely.
- Implement prevention requirements for employer-provided housing and transportation.

CDPH Isolation and Quarantine Guidance

Adding to the complexity here, recent [guidance from the California Department of Public Health \(CDPH\)](#) permits shorter isolation and quarantine periods than those found in the readopted Cal/OSHA ETS. [Cal OSHA confirmed](#) that the quarantine and isolation periods for infected or exposed employees are governed by this recent CDPH guidance, rather than the readopted Cal/OSHA ETS.

The CDPH isolation and quarantine guidance requires:

- **All workers that test positive for COVID-19, regardless of vaccination status:**
 - Must be excluded from the workplace for five days and may return after day five with a negative test and no symptoms
 - Must be excluded from the workplace for 10 days without testing and may return to work after day 10
 - Must wear a face covering at work around others for 10 days after the first positive test result
- **All workers that test positive for COVID-19, regardless of vaccination status:**
 - Must be excluded from the workplace for five days and may return after day five with a negative test and no symptoms
 - Must be excluded from the workplace for 10 days without testing and may return to work after day 10
 - Must wear a face covering at work around others for 10 days after the first positive test result

- ***Close contacts who are unvaccinated workers and workers who are fully-vaccinated and booster-eligible but have not received their booster yet:***

- No quarantine period if asymptomatic and receive a negative test on day five after exposure
- Must wear a face covering at work around others for 10 days after exposure

Employer Takeaways

Employers in California must comply with the readopted Cal/OSHA ETS as well as the CDPH's most recent quarantine and isolation guidance. In instances where the provisions between the two conflict, the CDPH guidance governs.

As a general reminder for California employers, the CDPH's order on January 5, 2022 requires masks to be worn by everyone, regardless of vaccination status, in all indoor public settings, including offices and shared worksites, until February 15, 2022.

The compliance landscape around Cal/OSHA ETS requirements and CA CDPH guidance is complex and changing rapidly. Risk Strategies will continue to work diligently to provide our clients with the most up-to-date information.

¹*Recently recovered from COVID-19 means a period of 90 days after the initial onset of COVID-19 symptoms or, for COVID-19 cases who never developed symptoms, for a period of 90 days after the first positive test.*

TAGS:

Employee Benefits