



COVID-19 ALERT

Date: December 2, 2020

To: CFSA Risk Pool Members

From: Rebecca Desmond, Executive Director

Subject: Cal OSHA COVID-19 Emergency Temporary Regulations

With the uptick in COVID-19 cases in the state, Cal/OSHA has issued Emergency Temporary Regulations that may affect you and your staff. CFSA strives to keep our members informed on the latest information pertaining to the coronavirus and its impact on your employees. Please read through the information below so you are prepared.

On November 30, 2020, the Office of Administrative Law (OAL) approved Cal/OSHA's proposed temporary emergency regulations regarding COVID-19 prevention and outbreaks for California employers. These emergency regulations go into effect immediately and can be viewed in the new Title 8 sections of the California Code of Regulations, 3205 (COVID-19 prevention); 3205.1 (COVID-19 Multiple infections & outbreaks); 3205.2 (COVID-19 Major Outbreaks); 3205.3 (COVID-19 Prevention in employer-provided housing); 3205.4 (COVID-19 prevention in employer-provided house transportation to and from work).

The new regulations will not apply to employees working from home, employees working from sites where one employee does not have contact with other employees or those employees that are covered by Cal/OSHA's Aerosol Transmissible Diseases standard.

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The emergency regulations include the following:

- During an outbreak, defined as three or more cases within a 14-day period, employers should provide testing to all workers except those who were not present at the workplace during the time. Those workers should be tested immediately, a week later and then at least once per week until there are no new cases detected for a 14-day period.
- Employers must exclude from the workplace any employees with COVID-19 cases and those who were exposed to COVID-19 until they satisfy certain return-to-work criteria. Employers must continue and maintain the excluded employee's earnings, seniority, and benefits while they are off work. As such, this requirement essentially constitutes a new form of paid leave that is available unless: (1) the employee is unable to work for reasons other than protecting persons at the workplace from COVID-19 transmission, or (2) the employer can demonstrate the exposure was not work-related. Additionally, there is no limit on the "leave" in the requirement, meaning an employee could receive it multiple times.
- Employers cannot require a negative COVID-19 test for an employee to return to work.
- Employers must implement certain protocols if there is an outbreak in the workplace, including the following:
 - Providing testing (immediately and 1 week later) to all employees in the exposed workplace during the outbreak period.
 - Excluding all COVID-19 cases and employees with a COVID-19 exposure; "COVID-19 exposure" means being within six feet of a COVID-19 case for a cumulative total of 15 minutes or greater in any 24-hour period within or overlapping with the "high-risk exposure period"; (1) For persons who develop COVID-19 symptoms: from two days before they first develop symptoms until 10 days after symptoms first appeared, and 24 hours have passed with no fever, without the use of fever-

reducing medications, and symptoms have improved; or (2) For persons who test positive who never develop COVID-19 symptoms: from two days before until 10 days after the specimen for their first positive test for COVID-19 was collected.

- Investigating the exposure, reviewing the employer's policies and controls in place, and taking corrective action as necessary; notify all employees who may have had COVID-19 exposure.
- Documenting the investigation, review, and corrective action taken; and
- Notifying the local health department and Cal/OSHA within 48 hours after knowledge of the outbreak.

Employers must implement additional protocols if there is an outbreak of 20 or more COVID-19 cases within a 30-day period until there are no new cases for a 14-day period, including conducting twice-weekly testing and evaluating whether respiratory protection should be required and whether the employer's operations should cease. Those who have tested positive for the coronavirus but have no symptoms should not return to work until at least 10 days have passed since they first tested positive for COVID-19. A negative test is not required.

The Occupational Safety and Health Standards Board will have an opportunity to readopt the temporary regulations. Emergency regulations generally remain in effect for 180 days unless OAL approves a readoption of the emergency regulation during the time period.

If you need assistance in updating your Exposure Control Plan to reflect the new regulations, please do not hesitate to reach out to the CFSA Risk Control team. Also, the Cal-OSHA Training Academy has made materials available at its website for companies and workers to help comply with the regulations.

Resources:

Cal/OSHA - <https://www.dir.ca.gov/oshsb/documents/noticeNov2020-COVID-19-Prevention-Emergency.pdf>

Cal/OSHA Online Training Academy - <https://trainingacademy.dir.ca.gov/page/on-demand-training-covid19>

Laughlin, Falbo, Levy & Moresi LLP - www.lflm.com

CFSA protocols for reporting to Workers' Compensation

Any time an employee covered by CFSA Workers' Compensation program tests positive for COVID-19, you as employers are required to follow these protocols:

- 1.** When an employee claims COVID-19 exposure is work related or employee falls under industrial presumption, employer must provide DWC-1 Form to the employee within 24 hours and report the claim to CFSA as you normally would by completing Employer's First Report of Injury and following your normal reporting process in addition to completing and providing this form to CFSA.
- 2.** Per SB 1159, all non-industrial positive COVID-19 incidents must be reported to CFSA within three business days. You need to assign a unique source number to your employee and track the employee information confidentially. Do not report any PII information to CFSA.
- 3.** Complete the CFSA COVID-19 Tracking Form for all COVID-19 related matters whether Worker's Compensation or non-Workers' Compensation related.

If you have any questions related to Workers' Compensation reporting requirements and COVID-19 please contact CFSA Workers' Compensation Claims Administrator Cindy Hehner at 916-263-6172 or chehner@cfsa.org