

Background

On December 16, 2021, the California OSHA Standards Board (“Cal/OSHA”) voted to readopt its Emergency Temporary Standard (“ETS”) with some revisions. The new changes took effect on **January 14, 2022** and are scheduled to expire on April 14, 2022.

Cal/OSHA first established the ETS in November 2020, in response to COVID-19. A revised ETS was adopted on June 17, 2021. Some of the major changes are listed below:

1. Testing requirements are modified.

The definition of “COVID-19 test” now allows at-home tests and over-the counter tests, however, a test cannot be “both self-administered and self-read unless observed by the employer or an employer-authorized representatives.” This means that an at-home test where the employee processes and reads their own results and reports to the employer is not allowed. This does not eliminate at-home tests but allows for more accurate means of verifying test results. The requirement that the test be FDA approved (including an Emergency Use Authorization) and administered in accordance with instructions remains the same.

- a. The revised ETS provides that an acceptable COVID-19 test cannot be self-administered and self-read. The employer or an employer-authorized representative must observe a self-administered test for it to qualify as a COVID-19 test under the ETS. UC attorneys are currently advising that tests should only be observed/read by medical personnel or others with similar training.
- b. The revised ETS obligates employers to provide testing to employees if they have had a close COVID-19 contact, even if they are fully vaccinated. This is a change from the prior version of the ETS that did not require employer to provide testing to employees who were fully vaccinated.
- c. The revised ETS also requires employers to provide testing at no costs to all employees during an outbreak, even those who were fully vaccinated. The prior version of the ETS did not require employers to provide testing to fully vaccinated employees who did not have symptoms during an outbreak.

2. Face covering:

The ETS definition of “Face covering” has been updated, in addition to California’s updated mask mandate in place from December 15, 2021 through February 15, 2022.

- a. The definition of “face covering” now includes a “surgical mask, a medical procedure mask, a respirator worn voluntarily, or a tightly woven fabric or non-woven material of at least two layers.” The regulation also specifies that the face covering should not have slits, visible holes, or punctures. Fabric masks must not let light pass through when held up to a light source and must completely cover the nose and mouth and be secured to the head with ties, ear loops, or elastic bands that go behind the head. Gaiters shall have two layers of fabric or be folded to make two layers. This does not include: scarves, ski masks, balaclavas, bandanas, turtlenecks, collars, or masks made of a single layer of fabric.
- b. The definition now also includes clear face coverings or cloth face coverings with a clear plastic panel used for communication with individuals who are deaf or hard-of-hearing or otherwise need to see a speaker’s mouth or facial expressions.
- c. The 2nd Revised ETS includes requirements for accommodating employees with disabilities that affect their ability to wear face coverings, including ensuring employees are at least six feet apart from all

Light Pass Test: Fabrics that do not allow light to pass through” Hold up the mask/fabrics to sun or light source, does it cast a shadow, If it casts a shadow, light is not passing through.

other persons if their condition or disability does not permit a face covering alternative and that they either be fully vaccinated or subject to weekly testing at no cost to the employee.

- d. Employers are still required to provide face coverings and ensure employees properly wear acceptable face coverings that are clean and undamaged when indoors, when outdoors and less than six feet away from other persons, and when required by the CDPH or any local health department. However, the updated ETS adds the following exemptions:
 1. When an employee is alone in a room, or when all persons in a room are fully vaccinated and asymptomatic;
 2. Employees wearing respirators required by the employer and used in compliance with [Cal/OSHA's respirator standard](#); and
 3. Employees who are fully vaccinated and asymptomatic when they are outdoors.
- e. Separate from the ETS, California's Department of Public Health implemented a new mandate on face coverings, requiring all individuals, vaccinated and unvaccinated, to wear a mask in all indoor public settings in California. The guidance applies to workplaces regardless of whether they serve the public or are open to the public. This requirement is in place from December 15, 2021 through February 15, 2022. More information about the face covering requirements, see the [CDPH Mask Guidance](#). This public health order for all people to wear masks indoors over-rides the Cal/OSHA ETS requirement.

3. Employees Exempted from Wearing a Face:

- a. For employees exempted from wearing a face covering due to a medical condition, mental health condition, or disability, and whose condition or disability does not permit non-restrictive alternative (i.e. face shield with a drape on the bottom, etc.), the employee must be six (6) feet apart from all other persons and either fully vaccinated or tested at least weekly for COVID-19 during paid time and at no cost to the employee.
- b. For employees exempted from wearing a face covering because the specific task they perform cannot be performed with a face covering, shall be six (6) feet apart unless the unmasked employee is either fully vaccinated or tested at least weekly during paid time and at no cost to the employee.
- c. The June 2021 ETS did not require that employers exclude employees with a close contact exposure from the workplace if they were fully vaccinated and symptom-free. The 2nd Revised ETS continues to exempt fully vaccinated and symptom-free employees from being excluded from the workplace, but will require that they wear a face covering and maintain physical distancing from all others at the workplace for 14 days following the last date of close contact. Similarly, employees that have returned to work after having COVID-19 and have remained symptom-free must also wear face coverings and be six feet apart for 14 days after a close contact exposure. (Note: CDPH isolation and quarantine guidance has superseded the Cal/OSHA ETS timelines that employees must remain away from work. See Cal/OSHA fact sheet: https://www.dir.ca.gov/dosh/dosh_publications/Isolation-and-Quarantine-fs.pdf)

4. Fully vaccinated:

Changes to the definition of "fully vaccinated" provides a more detailed, albeit more complicated, means of allowing for the mixing of vaccine brands approved by the FDA or authorized for emergency use by the FDA or World Health Organization (WHO) (i.e., receiving doses of different COVID-19 vaccines as part of one primary two dose series). It also allows employers to consider employees who received their vaccine as part of a clinical trial to be considered fully vaccinated under certain circumstances. A booster shot is not required.

5. Worksite:

Changes to the definition of “worksite” clarify that it does not include the location where an employee works by themselves without exposure to other employees or to an employee’s personal residence or other work location chosen by worker when an employee works remotely. This revised definition potentially narrows the number of employees that notice must be provided when there is COVID-19 at the workplace.

This new definition may, in some circumstances, enable employers to forego employee notification that it would have otherwise been obligated to provide under the previous version of the ETS.

6. Screening:

Screening requirements now require that an employer whose COVID-19 symptom screening is conducted indoors must ensure that the screener and employees wear face coverings regardless of vaccination status. This is a change from the previous version of the ETS where fully vaccinated employees did not need to wear a mask during screening.

7. Notification:

For purposes investigating and responding to a COVID-19 case in the workplace, the new ETS clarifies that the only employees that need to be notified are the employees who were on the premises at the same worksite as the COVID-19 case. This clearly excludes employees who were working in a different location from the COVID-19 case, including remote workers. The notice should be provided in the manner normally used for communicating information to employees (i.e., posting notices, text messages, hand delivery, etc.).

8. Testing in close-contact situations and outbreaks:

Testing in close-contact situations and outbreaks must now be provided at no cost, during paid time, to all employees who had close contact regardless of vaccination status. This is a change from the prior version where employers did not have to provide testing to fully vaccinated employees unless they experienced symptoms.

9. Multiple COVID-19 Infections and COVID-19 Outbreaks:

Just as in the previous ETS, an outbreak is defined as three or more employees COVID-19 cases within the exposed group. Previously, employers did not have to make testing available to fully vaccinated employees if they did not exhibit symptoms. Now, multiple COVID-19 infections or a COVID-19 outbreak, employer is required to implement outbreak testing for an “exposed group” of employees; all employees regardless of vaccination status must be offered the testing.

10. Exclusion from the workplace requirements modified.

The ETS modified an employer’s obligations to exclude employees from the workplace as described below. Note: CDPH isolation and quarantine guidance has superseded the Cal/OSHA ETS workplace exclusion timelines. See Cal/OSHA fact sheet: https://www.dir.ca.gov/dosh/dosh_publications/Isolation-and-Quarantine-fs.pdf.

Fully Vaccinated

The revised ETS requires fully vaccinated employees who have a close contact to be excluded unless they;

- a. Do not develop symptoms,
- b. Wear a face covering and maintain six feet of distance from others for 14 days following the close contact.

The requirement that they must wear a face covering is a new requirement that was not included in the prior ETS. Likewise, employees who have recovered from a COVID-19 infection in the prior 90 days and do

not have symptoms, can return to work after a close contact as long as they wear a face covering and maintain six feet of distance from others for 14 days following the close contact.

Not Fully Vaccinated

Employees, who have not been vaccinated, may return to work after a close contact if they do not develop symptoms, and 14 days have passed since the last known close contact. However, if 10 days have passed since the last known contact and the person wears a face covering and maintains six feet of distance from other for 14 days following the last close contact they may return to work. They may also return to work if 7 days have passed since the last known close contact and they test negative for COVID-19 with a specimen taken at least five days after the last known close contact, and the person wears a face covering and maintains six feet of distance from others at the workplace for 14 days following the last known close contact.

11. Return to work revisions:

Return to work revisions eliminated the exceptions which previously allowed close contact employees who developed symptoms to return to work following a negative COVID-19 test. Employees that develop any symptoms may return to work until:

- a. At least 24 hours have passed since a fever of 100.4 degrees Fahrenheit or higher has resolved without the use of fever-reducing medications; and
- b. COVID-19 symptoms have improved; and
- c. At least 10 days have passed since COVID-19 symptoms first appeared.

The revisions now allow asymptomatic employees who had close contact with a COVID-19 case and who were excluded from work, may return to work:

- a. After 14 days have passed since the contact; or
- b. 10 days have passed since the last known contact and the person wears a face covering and maintains six feet of distance from others in the workplace for 14 days following the last date of contact; or
- c. 7 days have passed since the last known close contact, the person tested negative for COVID-19 using a COVID-19 test with the specimen taken at least five days after the last known close contact, and the person wears a face covering and maintains six feet of distance from others while at the workplace for 14 days following the last date of close contact.

12. Employer provided housing:

Employer provided housing quarantine requirements no longer exempt fully vaccinated employees and employers must test all residents of employer-provided housing in which there were three or more COVID-19 cases in 14 days. The ventilation requirements were also updated so that if MERV 13 or higher filters are not used, HEPA filtration units shall be used, to the extent feasible, in all sleeping areas.

Employers are reminded that the other portions of the [prior ETS will still be in place](#). For example, employers must still develop a written COVID-19 Prevention Program, provide training to employees, provide certain COVID-19 disclosures to employees, and [pay exclusion pay to employees excluded from work due to a workplace exposure](#).