OCTOBER 26, 2021 | LEGISLATIVE & STANDARDS BOARD UPDATES

Cal/OSHA Proposes Revised COVID-19 ETS for Readoption

Last month, Cal/OSHA issued a discussion draft of a proposed Cal/OSHA COVID-19 "permanent rule" and convened an Advisory Committee, involving hours of comment on September 23, 2021 by employer and labor advocates and public health officials. Conn Maciel Carey served on the Advisory Committee on behalf of our broad-based employer coalition. The permanent rule is not expected to take effect until the spring 2022.

In the meantime, Cal/OSHA has just issued a revised COVID-19 Emergency Temporary Standard (ETS) for readoption. If approved by the Standards Board, this second re-adoption of the ETS would be effective from January 14, 2022 through April 14, 2022. After that time the "permanent rule" presently under consideration would be expected to replace the ETS.

Below are the proposed changes to the COVID-19 ETS under consideration:

- ***Modify 10-day exclusion period for close contacts:*** Under the current rule an employee experiencing a close contact who never develops COVID-19 symptoms may return to work after 10 days since the last known close contact. But the proposed revised rule allows a 10-day exclusion period (in lieu of the 14-day default) only if the employee wears a face covering and maintains six feet of distance from others for 14 days following the last date of close contact.

- ***Impose additional conditions for exceptions to close contact exclusion:*** The current rule provides blanket exceptions from the required exclusion of close contacts where such individuals are fully vaccinated or have post-infection immunity. However, the proposed revised rule allows such individuals to remain in the workplace only if they wear faces coverings and maintain six feet of distance from others in the workplace for 14 days following the last date of close contact. Additionally, fully vaccinated employees must get a COVID-19 test 3 to 5 days after the close contact to qualify for this exception.
- ***Create 7-day exclusion period to replace "critical staffing shortages" exception:*** The current rule recognizes a 7-day exclusion period where health care, emergency response or social service workers experience a close contact during critical staffing shortages. The proposed revised rule recognizes a 7-day exclusion period – broadly *applicable to any industry* – where the employee (1) tested negative for COVID-19 using a PCR test with the specimen taken day 5 or later after the last known close contact, and (2) wears a face covering and maintains physical distance from others in the workplace for 14 days after the last close

contact.

- ***Make testing available to all employees experiencing a close contact:*** The proposed revised rule requires that employers "make COVID-19 available at no cost, during paid time," regardless of vaccination status. Thus, there would no longer be an exception for fully vaccinated employees.
- ***Requires face coverings for all employees being screened:*** The revised rule would require that all employees wear face coverings during the pre-work screening for COVID-19 symptoms, regardless of vaccination status.
- ***COVID-19 outbreaks – remove testing exception for vaccinated employees:*** The proposed revised rule deletes the existing exception from the COVID-19 testing requirement for employees who were fully vaccinated before the outbreak occurred and did not have COVID-19 symptoms (see Sec. 3205.1(b)). This would impose a significant additional burden on employers given that testing is expansively required of all employees within the "exposed group."
- ***Employer provided housing – modify vaccination exemption:*** While the current rule provides a complete exemption from the employer provided housing rule where all residents are fully vaccinated, the proposed revised rule maintains the testing and quarantine requirements (see Sec. 3205.3(g) and (h)), regardless of whether all residents are fully vaccinated.
- ***Employer provided transportation – modify face covering requirement:*** The proposed revised rule requires that employers provide face coverings to all employees, regardless of whether they are fully vaccinated.

We expect that this revised rule will be placed on the agenda for one of the remaining Standard Board meetings towards the end of 2021 and be voted on "for readoption" before the current ETS expires.