JULY 22, 2022 | LEGISLATIVE & STANDARDS BOARD UPDATES

Cal/OSHA Updates FAQs Following New CDPH Definition of Close Contacts

By Megan S. Shaked

With the definition of "close contacts" now focused on "shared indoor airspace" rather than the 6 feet/15 minute threshold, Cal/OSHA has updated its FAQs to assist in interpreting the various ETS requirements implicated by the new definition.

Background

When the current version of the ETS was adopted, it specified that if close contact is defined "by regulation or order of the CDPH," the CDPH definition would apply rather than the definition provided in the ETS itself. When CDPH issued an order on June 8 updating its definition of "close contact," that new definition applied to the ETS. (Cal/OSHA updated its FAQs on June 21 to make clear that the new definition applies to the ETS.)



On June 9, CDPH followed up with updated FAQs to address this new definition.

Cal/OSHA's FAQs re New Definition of Close Contact

On Monday, Cal/OSHA added its own update to its FAQs, adding a "Definitions" section to address the updated definition of close contact:

Q: CDPH has revised its definition of "close contact," and this new definition applies to the ETS because it is included in a state public health officer order. A "close contact" is now "someone sharing the same indoor airspace, e.g., home, clinic waiting room, airplane etc., for a cumulative total of 15 minutes or more over a 24-hour period (for example, three individual 5-minute exposures for a total of 15 minutes) during an infected person's (laboratory-confirmed or a clinical diagnosis) infectious period."

What is a shared indoor airspace in the context of the ETS, and how should an employer determine who has had a close contact?

A: Consistent with CDPH guidance on identifying close contacts, a shared indoor airspace may be analyzed in several ways. Smaller spaces contained within a large indoor space that are separated by floor-to-ceiling walls are not part of the same indoor airspace as the large indoor space. These smaller spaces may include suites, rooms, waiting areas, bathrooms, or break or eating areas. In these settings, an employer would determine close contacts by evaluating which employees shared that smaller space with a COVID-19 case for 15 minutes or more over a 24-hour period.

Larger indoor settings that are not divided into smaller spaces that are separated by floor-to-ceiling walls may constitute a shared indoor airspace. These settings may include open-floor-plan offices, warehouses, retail stores, or manufacturing or food-processing facilities. In those cases, employers must evaluate whether employees shared the same indoor airspace on a case-by-case basis, considering the duration and proximity of the contact, regardless of the specific task of the employees. For example, there may be a close contact between employees in an open-floor-plan plant even though the two persons worked on separate machines, one as a maintenance worker and one as a packer on an adjacent line. Proximity and length of exposure are key to this determination.

There may be both large indoor spaces as well as smaller spaces within them. Employers with both large indoor spaces and smaller indoor spaces within the large indoor spaces must evaluate close contacts in both types of spaces. For example, in an open-floor-plan office or warehouse (large indoor space) with a bathroom and break area (smaller spaces), the employer must evaluate both types of spaces to determine who had a close contact.

While the Cal/OSHA guidance still leaves many questions unanswered, there is some helpful language to assist employers in determining close contacts. Particularly in large indoor spaces, Cal/OSHA calls for employers to analyze large indoor settings that are not divided into smaller spaces on a "case-by-case basis" and specifies that "proximity and length of exposure are key to this determination." The ETS and FAQs remain silent, however, about what measure Cal/OSHA would consider to be beyond "shared indoor airspace."

For smaller spaces, the FAQ calls for employers to determine close contacts "by evaluating which employees shared that smaller space with a COVID-19 case for 15 minutes or more over a 24-hour period."

During the Occupational Safety and Health Standards Board meeting held on July 21, 2022, Board Member Laura Stock requested further information from DOSH on how the new definition of close contact is playing out in enforcement actions. Board member Stock acknowledged that the new definition introduces ambiguity and that it seems to leave employers to determine whether people are sharing indoor airspace.

In response to the inquiry, the Division indicated that it had no further information at this time, but hoped to have more to share at the next board meeting. The Division did note that it continues to update its FAQs. The next Standards Board meeting is scheduled for August 18, 2022. The new definition of close contact is set to be an agenda item for that meeting.

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