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Cal/OSHA Updates FAQs Following Third Readoption of COVID-19 Emergency Temporary Standard

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Now that Cal/OSHA's Third Readoption of the COVID-19 Emergency Temporary Standard is in effect, the agency has updated its Frequently Asked Questions to reflect those revisions effective May 6, 2022. (See our previous blog articles regarding the revisions in the Third Readoption and the Board vote to approve the readoption.)

Many of the updated FAQs simply reflect the revised ETS language itself, for example, removing references to vaccination status as the ETS requirements are no longer dependent on such status. The FAQs have also been updated to reflect the current terminology used in the Third Readoption, for example, using "infections period" instead of "high risk exposure period."

However, some of the updated Frequently Asked Questions provide added clarity regarding the current requirements:

Testing

For example, under "Testing" the following FAQ added the language in bold:

Q: How can an employer comply with the testing requirement?

A: To comply with the testing requirements of the ETS, an over-the-counter (OTC) COVID-19 test **may be** both self-administered and self-read **if verification of the results, such as a time and date stamped photograph of the result or an OTC test that uses digital reporting with time and date stamped results, is provided**.

For the question regarding what to do if an employee refuses to take a test, the FAQ now repeats the language from another FAQ that *"Employers may require employees to undergo COVID-19 testing under certain circumstances,"* referencing the Department of Fair Employment and Housing FAQ on point.

Administrative Controls

FAQ 3 under "Face Coverings and Other Controls" has added additional guidance (in bold) regarding the requirements for administrative controls:

- Administrative controls
  - Provide for, encourage and allow time for frequent hand washing, and provide hand sanitizer.
  - **Physical distancing where feasible during major outbreaks, when respirators cannot be worn.**
  - **When required by CDPH or during outbreaks and major outbreaks, face coverings to minimize the spread of the virus.**

Ventilation

FAQ 2 under "Ventilation" added the guidance in bold:

Q: How can employers who rent buildings or workspace in buildings over which they do not have control comply with the requirements regarding maximizing outdoor air?

A: Employers in these circumstances should request that the building operator assist with compliance with the emergency regulation. It should be noted that if the building operator has employees that work on the premises, it is also subject to the rule. **Even when the building operator has no employees in the building, a building operator is also responsible for providing a safe workplace as a controlling and/or correcting employer.**

Vaccines

New Questions have been added to this section to reflect that the requirements under the ETS are now the same regardless of vaccination status:

Q: Must the ETS still be followed for vaccinated persons?

A: Yes, the requirements of the ETS are the same for vaccinated and unvaccinated employees.

Q: Does the ETS require employers to document employee vaccination status?

A: No, the ETS does not require employers to document employee vaccination status.

Addressing COVID-19 In the Workplace

Questions regarding the definition of "close contact" and "infectious period" state that these definitions will change "if CDPH changes its definition…in a regulation or order."

Outbreaks

The FAQs addressing employer obligations in outbreaks and major outbreaks were updated to add the following language regarding excluding employees:

For Outbreaks: "Exclude from the workplace employees who had close contacts, until they test negative or the return to work requirements for COVID-19 cases are met. Please see the CDPH Isolation & Quarantine section of this FAQ for information on when COVID-19 cases may return to work."

For Major Outbreaks: "Exclude from the workplace employees in the exposed group, until they test negative or

the return to work requirements for COVID-19 cases are met. Please see the CDPH Isolation & Quarantine section of this FAQ for information on when COVID-19 cases may return to work."

Exclusion Pay

FAQ #6 under "Exclusion Pay" added language that "***The employer has the burden of proof*** to demonstrate that an exposure to COVID-19 was not work related."

CDPH Isolation and Quarantine Fact Sheet

The FAQs have been revised to reflect updated CDPH guidance regarding isolation and quarantine. Specifically, the FAQs include various charts that track CDPH guidance covering: exclusion for employees who test positive for COVID-19 (Table 1); employees exposed to someone with COVID-19 (close contacts in non-high-risk setting) (Table 2); and close contacts in high-risk setting (Table 3).

Positive cases are excluded from the workplace regardless of vaccination status, previous infection or lack of symptoms for at least 5 days. Under certain circumstances, an employee may return to work before 10 days has passed if certain conditions are met, there is a negative test on or after day 5, and the employee continues wearing face coverings for a total of 10 days.

Close contacts in a non-high-risk setting must test within 3 to 5 days after their last close contact. Those infected within the prior 90 days need not test unless they are symptomatic. Such close contacts must wear face coverings around others for a total of 10 days after exposure. However, if such close contacts are symptomatic, they must be excluded and tested. Such excluded employees may return to work earlier than 10 days if they test negative and continue to wear face coverings.

Close contacts in certain high-risk settings who are not fully vaccinated or have not been infected with SARS-CoV-2 within the prior 90 days must be excluded from work for at least 5 days. Such close contacts may return to work if asymptomatic and test negative on day 5 or later. Face coverings are required.

In general, where an employee is unable to test or chooses not to test, work exclusion may end after day 10.

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